

No. 10300

22      United States  
Circuit Court of Appeals  
For the Ninth Circuit.

PHILLIP SUETTER,

Appellant,  
vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States  
for the District of Oregon

FILED

MAY 24 1943

PAUL P. O'BRIEN,  
CLERK



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Portland, Oregon,  
For the Appellee.

In the District Court of the United States  
For the District of Oregon

March Term, 1942.

Be It Remembered, That on the 23rd day of May 1942, there was duly filed in the District Court of the United States for the District of Oregon, an Indictment, in words and figures as follows, to wit:

[1\*]

In the District Court of the United States  
For the District of Oregon

UNITED STATES OF AMERICA

vs.

PHILLIP SUETTER,

Defendant.

INDICTMENT FOR VIOLATION OF SECTION 77q(a) (1), Title 15, U.S.C.A., and SECTION 338, Title 18, U.S.C.A.

United States of America,  
District of Oregon—ss.

The Grand Jurors of the United States of America, for the District of Oregon, duly impaneled, sworn and charged to inquire within and for said District, upon their oaths and affirmations do find, charge, allege and present:

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

COUNT ONE:

That Phillip Suetter, hereinafter referred to as the defendant, and late of the County of Josephine and State of Oregon, in the district aforesaid, on to-wit: January 15, 1934, and continuously thereafter up to and including June 30, 1941, and at the various times of the commission of the various offenses hereinafter set forth, in the district aforesaid, devised and intended to devise a certain scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises from a certain class of persons then residing in divers states of the United States; that is to say, from that class of persons who were desirous of making profitable and paying investments in units of Suetter Placer Mines, parts in the Suetter Placer Mines, and other interests in Suetter Placer Mines, which said persons are hereinafter designated and referred to as the persons intended to be defrauded and include the fololwing: [2]

Francis J. Beckman  
Dubuque, Iowa

Paul P. Rhode  
Green Bay, Wisconsin

Stephen A. Bubacz  
Chicago, Illinois

Ralph T. Montag  
Portland, Oregon

William E. Phillips  
Chicago, Illinois

A. C. Kuncl  
Oak Park, Illinois

Marion Chester Laird  
Chicago, Illinois

Leo Gartland  
Marion, Indiana.

which said scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, so devised and intended to be devised by the said defendant, was in substance as follows, to-wit:

1. The defendant would and did, prior to the 22d day of May, 1939, purchase certain mining claims covering property in Josephine County, Oregon;

2. It was a further part of said scheme and artifice to defraud that said defendant would and did, on or about January 2, 1937, execute a trust agreement dated January 2, 1937, and filed in Josephine County, Oregon, in Miscellaneous Record No. 11 at Page 238, on January 18, 1937, as Instrument No. 55914, which said trust agreement provided, among other things, that he, the said Phillip Suetter, should and would take title to certain mining claims in Josephine County, Ore-

gon, said claims being particularly described in said trust agreement, and would as trustee of said claims administer them for the benefit of the persons hereinabove designated and referred to as the persons intended [3] to be defrauded, and that said property should be considered, for purposes of the administration of said trust, as eight hundred (800) undivided units, said units to be the subject of purchase by said persons intended to be defrauded and the purchasers thereof to be entitled to a pro rata share of the unit price or income thereof; the defendant, Phillip Suetter, to keep a true and accurate set of books and accounts showing the income and disbursements of the trust and to be paid a monthly salary out of income for his services in the management of said trust;

3. It was a further part of said scheme and artifice to defraud that said defendant would and did at all the times hereinafter referred to in this indictment dominate and control the administration of said trust and was the sole trustee thereof;

4. It was a further part of said scheme and artifice to defraud that the said defendant would and did solicit the said persons intended to be defrauded to invest their moneys and properties in the units, parts and other interests of Suetter Placer Mines, Josephine County, Oregon;

5. It was a further part of said scheme and artifice to defraud that the said defendant would and did obtain from one W. E. Phillips, an employee of the Link-Belt Company of Chicago, Illinois, a

promissory note in the sum of \$5,000.00 in payment for five units of Suetter Placer Mines;

6. And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that it was a further part of said scheme and artifice to defraud that the said defendant so operating as aforesaid would and did, in order to induce the persons intended to be defrauded to subscribe to the units, parts an interests in Suetter Placer Mines, and in order to lull the said persons intended to be defrauded into a false sense of security with respect to such investments, [4] and in order to enable the defendant to convert to his own use and benefit a large part of the moneys and other valuable properties of the persons intended to be defrauded, and to enable the defendant to retain said moneys and other properties of value, and in order to induce the persons intended to be defrauded to retain their units, parts and other interests in the said Suetter Placer Mines, by divers false and fraudulent pretenses, representations and promises and by alluring and specious predictions, made by means of circulars, telegrams, letters and other written communications and oral statements, represent to the persons intended to be defrauded that:

A. That the defendant, Phillip Suetter, was the sole owner of Suetter Placer Mines, and had a clear and absolute title to said Mines, whereas in truth and in fact, as the said defendant then and there well knew, he was not the sole owner of Suetter Placer Mines, and he did not have a clear and absolute title to said Mines, and further, as the

said defendant then and there well knew, Ralph T. Montag had a one-half interest in said Suetter Placer Mines, and said Ralph T. Montag had a first mortgage on said Suetter Placer Mines as security for a \$10,000 indebtedness;

B. That said defendant would keep a true and accurate set of books and accounts showing the income and disbursements of the Suetter Placer Mines Trust, whereas in truth and in fact, as the said defendant then and there well knew, he would not and did not keep a true and accurate set of books and accounts showing the income and disbursements of the Suetter Placer Mines Trust;

C. That employees of the Link-Belt Company of Chicago, Illinois, had agreed to invest \$80,000 in the Suetter Placer Mines, whereas in truth and in fact, as the said defendant then and there well knew, the employees of the Link-Belt Company of Chicago, Illinois, had not agreed to invest \$80,000 in the Suetter Placer Mines; [5]

D. That all of the moneys, funds and property invested in the units, parts and interests of Suetter Placer Mines, would be used to purchase mining machinery and for the purpose of defraying expenses in connection with the operation of Suetter Placer Mines, whereas in truth and in fact, as the said defendant then and there well knew, all of the moneys, funds and property invested in the units, parts and interest of Suetter Placer Mines, would not be used to purchase mining machinery and for the purpose of defraying expenses in connection with the operation of Suetter Placer Mines, and

further, as said defendant then and there well knew, a large portion of the said moneys, funds and properties invested in the units, parts and interests of the said Suetter Placer Mines would be and were converted by the said defendant to his own use and benefit;

E. That investors in the units, parts and interests of Suetter Placer Mines, would realize large returns on their investments, whereas in truth and in fact, as the said defendant then and there well knew, the said investors in the units, parts and interests of Suetter Placer Mines, would not realize large returns on their investments;

F. That an investment in the units, parts and interests of Suetter Placer Mines, was a safe, sound and conservative investment, whereas in truth and in fact, as said defendant then and there well knew, an investment in the units, parts and interests of the said Suetter Placer Mines, was not a safe, sound and conservative investment, and further, as the said defendant then and there well knew, an investment in the units, parts and interests of the said Suetter Placer Mines was a highly speculative investment;

G. That defendant had hired engineers who had tested the properties of Suetter Placer Mines, Josephine County, Oregon, and that said engineers had submitted a favorable report, whereas in truth and [6] in fact, as said defendant then and there will knew, he had not hired engineers who had given favorable reports;

H. That production would be commenced by September or November, 1937, whereas in truth and in fact, as said defendant then and there well knew, production would not be commenced by September or November of 1937, and further that production was not commenced by September or November of 1937;

I. That the defendant had a great deal of practical experience in mining and had been financially successful, whereas in truth and in fact, as said defendant then and there well knew, he did not have a great deal of practical experience in mining and had not been financially successful;

J. That an investment of \$300,000 would bring returns to an investor of from one to three million dollars during the three years commencing September 30, 1938, whereas in truth and in fact, as said defendant then and there well knew, an investment of \$300,000 would not bring returns to an investor of from one to three million dollars during the three years commencing September 30, 1938;

K. That he would commence shipping gold to the mint from Sutter Placer Mines within ninety days after December 16, 1938, whereas in truth and in fact, as said defendant then and there well knew, he would not commence shipping gold to the mint within said ninety days after December 16, 1938;

L. That the holdings of Sutter Placer Mines would pay dividends of 20 per cent of a hundred million dollars, whereas in truth and in fact, as

said defendant then and there well knew, the holdings of Suetter Placer Mines would not pay dividends of 20 per cent of a hundred million dollars;

M. That the property of Suetter Placer Mines was proven, whereas in truth and in fact, as said defendant then and there well knew, the property of Suetter Placer Mines was not proven; [7]

N. That the investors in Suetter Placer Mines would never lose the money they invested, whereas in truth and in fact, as said defendant then and there well knew, the investors in Suetter Placer Mines would lose the money they invested;

O. That the defendant had invested over \$50,000 of his own funds in Suetter Placer Mines, whereas in truth and in fact, as said defendant then and there well knew, he had not invested over \$50,000 of his own funds in Suetter Placer Mines.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said defendant, so having devised the said scheme and artifice to defraud and for obtaining money and property by means of false pretenses, representations and promises set out and described herein, did take and convert to his own use and benefit money and other properties of value obtained from the persons intended to be defrauded by virtue of the said scheme and artifice herein described.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said defendant, so having devised the said scheme and artifice to defraud and for obtaining money and prop-

erty by means of false and fraudulent pretenses, representations and promises, as in this count alleged and set forth, and for the purpose of executing and attempting to execute the said scheme and artifice to defraud, on to-wit: November 21, 1939, at Grants Pass, in the State and District of Oregon, and within the jurisdiction of this Court, unlawfully, knowingly and feloniously did place and cause to be placed in the Post Office of the United States, to be sent and delivered by the Post Office Establishment of the United States, according to the direction and address thereon, a certain letter, to-wit: a letter of the tenor following: [8]

“Picture of  
Indian Girl)

Phil Suetter,  
President

Oregon Mining Investment Co., Inc.  
Log Cabin  
Graves Creek, Oregon

November 22nd 1939

Rev Paul P Rhode  
Bx 65  
Green bay Wisconsin.

Dear Bishop.

On my arrival west I found one of mymen had broken his leg in four places, and I found things rather difficult situation Hoever this Montsignor, Here had never tried to use any thing toward me but Milas.

So far it has gotton him nothing but Grief, I want you and Arch Bishop Beckman to

realize any thing that I do it is for you both. For your information. I have the news presented to me that he has been to a certain atorrneys office with his attorney, try to accuse me of forging, some writing on those notes.

Of course that is something that I will may no attention to on account of the peticular source it came from, But I should have the support of you and Arch Bishop Beckman to make this a Hollowing success.

Afterall Bishop, I have only did what was for the interest of both you and Arch Bishop Beckman, and you ask me personaly to do things and I did it. Why Cannot you and the Archbishop sit down with me and go over these matters.

There is many things I would like to tell you, But I will never to write them, All I serve from you Bishop is Support, and you are that one can absoutely help me in many ways, Further Remmember this your investment is involved in the three mines, California, Ajax, and Hercules Mines.

The most trouble was because I insisted that they take care of your investment in that mine, which was done in part of my contract which they assumed, signed by the Archbishop Beckman. And Further I returned them there \$178.-000. Worth of Notes.

Two very high prices attorneys, have begged me for Hours for the cancelation of the Con-

tract that the Bishop Made with me, which has been default until few days,

Now this man Barney Payton, I have statements to make at this time only if you will check with the Union Pac you will learn plenty, and the Wentworth, & Irvin Auto Co of the [9] Pac Northwest at Portland, many other that I can mention, He has pulled many similar deal just like the pulled on you. as he stated to me, with the help of some cheap chizzling attorney in Chicago.

Bishop if you owe anything to any one you owe to me? I protected and I intend to continue doing so, If I recieve support from any one with the two years you will have your investment, with a mighty fine interest.

Sincerely Yours

PHILLIP SUETTER"

which said letter, when so placed and caused to be placed in said Post Office of the United States, then and there was enclosed in an envelope bearing uncancelled United States postage at the first class rate and the following return card, direction and address, to-wit:

"After 5 days, return to

Phil Suetter

Grants Pass Oregon.

AIR MAIL

Rev Paul P Rhode

Green Bay

Box 65.

Wisconsin"

and that the said person to whom the said letter and said envelope were so addressed was then and there one of said persons intended to be defrauded and whose money and property, according to said scheme and artifice, were to be obtained by means of the false and fraudulent pretenses, representations, and promises as aforesaid;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

#### COUNT TWO:

That the said defendant, Phillip Suetter, hereinbefore named in the first count of this indictment, so having devised and employed the scheme and artifice to defraud described in the first count of this [10] indictment, under the circumstances and conditions set out in the first count of this indictment, the allegations of which count descriptive of said circumstances, conditions, scheme and artifice, and of the connection of said defendant therewith, being hereby incorporated in this count of this indictment by reference to the first count as if they were here repeated in full, and for the purpose of executing and attempting to execute the said scheme and artifice to defraud, on to-wit: the 16th day of December, 1940, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, unlawfully, knowingly and feloniously

did place and cause to be placed in the Post Office of the United States, to be sent and delivered by the Post Office Establishment of the United States, according to the direction and address thereon, a certain letter, to-wit: a letter of the tenor following:

“Phillip Suetter  
P. O. 677  
Grants Pass, Oregon

Mining Properties  
in Josephine County  
State of Oregon

Dec. 16, 1940.

Most Rev. Paul P. Rhode,  
Green Bay, Wis.

Dear Bishop Rhode:—

Received your letter of the 14th with contents. I was mistaken in the amount of the check.

I regret very much that my financial condition at present will not permit me to make a settlement with you. I spent a great deal of money trying to get a settlement of my contract with Archbishop Beckman, and because of the unwelcome publicity I received when his agents advertised me over the radio and through the press, I have been unable to make the contacts I might otherwise have made.

It will take some time to overcome this, aside from the personal hurt to my feelings in the matter. Nothing would please me better

than to be able to return to you every dollar you invested with me in the mines, but in order to do this, I must work them and produce it from the ore. This will take some time, as machinery belonging to me has been attached by Archbishop Beckman's attorney here in a law suit for his fees, and I need it in my operation. However, with God's help, and my constant prayers, I am hopeful all will yet be well. [11]

If Archbishop Beckman had paid me the amount due on my contract, all this would not have happened, as I could have gone ahead with the mines, and would have been in a position to make payments to you from time to time.

For the past week I have been quite ill with the flu. The pre-trial comes up Thursday. If it be God's will that I be persecuted and prosecuted by a Vicar of Christ on earth, then I bow to His will.

Thanking you for sending me the papers,  
I am

Most respectfully yours,  
PHILLIP SUETTER

P.S. I won my case with Gilmore last Friday. He has to pay all court costs, etc."

which said letter, when so placed and caused to be placed in said Post Office of the United States, then and there was enclosed in an envelope bearing uncancelled United States postage at the first

class rate and the following return card, direction and address, to-wit:

“3921 N.E. 81st Ave.,  
Portland, Ore.

Special Dil

Most Rev. Paul P. Rhode,  
Box 65  
Green Bay, Wis.”

and that the said person to whom the said letter and said envelope were so addressed was then and there one of said persons intended to be defrauded and whose money and property, according to said scheme and artifice, were to be obtained by means of the false and fraudulent pretenses, representations, and promises as aforesaid;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT THREE:

That said defendant, Phillip Suetter, hereinbefore named in the first count of this indictment, so having devised and employed the [12] scheme and artifice to defraud described in the first count of this indictment, under the circumstances and conditions set out in the first count of this indictment, the allegations of which count descriptive of said circumstances, conditions, scheme and

artifice, and of the connection of said defendant therewith, being hereby incorporated in this count of this indictment by reference to the first count as if they were here repeated in full, did unlawfully, feloniously, wilfully and knowingly, in the sale of a security, to-wit: interests of the Suetter Placer Mines, by the use of the United States mails, employ said scheme and artifice to defraud, the use of the United States mails being in the manner following, to-wit: the defendant on to-wit: the 28th day of May, 1939, at Grants Pass, in the State and District of Oregon, and within the jurisdiction of this Court, did knowingly, unlawfully, wilfully, fraudulently and feloniously place and cause to be placed in the Post Office of the United States at Grants Pass, Oregon, for submission and delivery thereof by the Post Office Establishment of the United States according to the direction and address thereon, a certain letter, to-wit: a letter of the tenor following:

"(Picture of Indian Girl)      P.O. Box 677  
Kateri Tekakwitha  
Group  
Mount Reuben Mines  
Ajax :: California ::  
Hercules  
Grants Pass, Oregon

May 28, 1939

Francis J. Beckman,  
1105 Locust Streets,  
Dubuque, Iowa.

Dear Archbishop:

After my talk to you on the phone this morning, well it cost me thirty-five dollars to talk to you, cost me \$27 to talk to Lasecki, and I am safe to say its cost me over \$500.00 phoning, where this money would all help to get this money into our operation and there's none to fault on this only your friend, O'Laughlin. He's not only disturbing you and me but everybody in the country. Do you suppose that's going to help this matter any. He banks on being supported by you and Father Kessler. Now he already had Mr. Pricestead, to measure up the basement at my cottage on Smith River for three rooms to be built on—I want to get all this over to you clearly. If ~~you~~ they can use any of these letters on me, they will try to further their own interests. Their success [13] in what they are trying to pull will mean your failure.

Now here is about \$200,000 worth of machinery setting idle, all for no reason, only to satisfy a wandering priest. Not only that but he wants to condemn a man to get controlling interest of one of the largest projects in North America. That can't ever be done, I will stand on my rights and I can't understand where they get this noise, of being your money when I went through all kinds of tortures and gried to sell you paper to make this a howling success for you and I, and everybody concerned. Bishop Rhody has \$28,000 in cash besides a note he bought from you, Father Steve, Father Nichols signed ~~how~~ \$50,000 endorsements to sell Shaw, now this is just a few I am mentioning, and I have to protect all these people. There are a number of others. Why this wouldn't stand in any court in the world with the documents I have from you. Which I sure hope that you can take this man O'Laughlin away from here before he ruins you and me, both. And he certainly disgrace you.

Last Wednesday, when Walker and I were in Medford, we had found that he had phoned Reems from somewhere on the coast, that he was going to be in his office, but he never appeared, and then we found that he had been over at Wheeler's, making a lot of fuss over there. Now if you don't want to take it upon yourself to stop this man and keep him from annoying me, I think I can. Walker or any-

one else cares nothing for his power of Attorney, it means nothing. His Power of Attorney will mean your ruinination by the way it looks now.

After Walker and I came from Medford he *steeped* into the First National Bank at Grants Pass and Mr. Hacketts insinuated to Mr. Walker, he heard that we were having some difficulties. He insinuated that it came from O'Laughlin, Walker and I don't know whether it was him, but they did mention that it would be settled out of court. Now that doesn't sound so 'Hot' and there's nothing to settle. only what you can *I can* settle, after this is in full operations. I am protecting you and you only, but when you have two men pulling this kind of stuff, accusing me of writing anything on these notes after you had signed them, they sure have themselves in bad or any other time. Its just about time you are getting busy. I had photostatic copies made of all of our transactions and turned them over to Roberts, which I was compelled to do to protect myself and my interests and others. I've got to have money here, we've done all the testing we need to do on this project and they've rumored around in this country there is plenty of money so get it over here and I'll build you the biggest project any man ever saw and turn it over to you a going concern, to you personally.

Now then I've bought the Bear Mine without any money and I've sure got to get busy and go to testing. I've got to get a screen on the Leland property. This is something I've had under way for sometime, in getting 2/3 interest in the Wheeler property for 10 cents on the \$1 or maybe a little more, but I don't dare to say much before I get the job done, because thru these other men always talking to you and get you confused they use everything against me. All they can see is this big project. Now Walker and I have talked this thing all over and we began working on the Ajax on this high grade ore. Now then if you are not going to and can't make the grade to get things lined up for a howling success I want you to let me know because I have started to bring other capital in, which I can do with Walker's help and I don't want to until I get the final from you, because you have my word that I'll not do this, interest anyone else in this property until I get the final word from you to go ahead., saying that you will not furnish anymore capital and I want that in writing. It would certainly delay matters if that would be the case. And I also want you to know what I had in mind about the John Bosco, that will make us plenty of money to make a deal with Terwilliger for a little [14] sum which I think I can do and later on I can ~~hold that~~ haul that *oare* to our mill or put a small mill on that property and

get it started. Terwilliger is patented land and my buildings are on there, that's why I was slow in taking them off. I had that in mind at all times and I know this can be done then I can protect other interests I have on French Hill. This may be a little confusing to you in this letter but I can explain that all. This will mean \$1,000,000 worth of property with St. John Bosco, The Leland Property, and the Josephine, by \$100,000 to put this equipment on the California Ajax and Hercules would do it all, but it may not take half of this amount, but where it wouldn't take half of it, what I mean by that is that I'd put a small mill which will take \$25,000 for a flexible mill and this restart I'm having built which is not costing me a penny until its operating. I could get all the money we would need for a 10,000 mill but it seems that you always say that I promised this and I promised that, I've done a million and a half's worth now with less than \$400,000 and there isn't any man that can work under this pressure, Like I've been doing and accomplish what I have. First it was Hogan, then Gillmore now its 2 priests, and you could have settled all this by just setting down on them. I have discounted your notes, been put to attorney expenses for a lot of money and still I'm not discouraged, as I'm not easily discouraged.

Now here you are setting with one hundred million dollars in your lap and waiting for someone to ruin it. Let anybody investigate this after we get it in operation and it will turn for \$30 to \$40 million. The Standard Oil has \$400,000,000 and they are looking for a project like this slate. Mr. Walker had a call from Chicago wanting him to connect me up with them. I'm only setting tight for *you* protection.

Now I want to tell you again, you've *get* to have something definite here by Wednesday.

Yours very truly,

PHILLIP SUETTER

PHILLIP SUETTER”

which said letter, when so placed and caused to be placed in the Post Office of the United States, then and there was enclosed in an envelope bearing uncancelled United States postage at the first class rate and the following return card, direction and address, to-wit:

“Mount Reuben Mines  
Ajax :: California :: Hercules  
P. O. Box 677  
Grants Pass, Oregon

Francis J. Beckman,  
1105 Locust Ave.,  
Dubuque, Iowa.” [15]

and that the said person to whom the said letter and said envelope were so addressed was then and

there one of said persons intended to be defrauded and whose money and property, according to said scheme and artifice, were to be obtained by means of the false and fraudulent pretenses, representations, and promises as aforesaid;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

#### COUNT FOUR:

That said defendant, Phillip Suetter, hereinbefore named in the first count of this indictment, so having devised and employed the scheme and artifice to defraud described in the first count of this indictment, under the circumstances and conditions set out in the first count of this indictment, the allegations of which count descriptive of said circumstances, conditions, scheme and artifice, and of the connection of said defendant therewith, being hereby incorporated in this count of this indictment by reference to the first count as if they were here repeated in full, did unlawfully, feloniously, wilfully and knowingly, in the sale of a security, to-wit: interests of the Suetter Placer Mines, by the use of the United States mails, employ said scheme and artifice to defraud, the use of the United States mails being in the manner following, to-wit: the defendant on, to-wit: the 29th

day of May, 1939, at Grants Pass, in the State and District of Oregon, and within the jurisdiction of this Court, did knowingly, unlawfully, wilfully, fraudulently and feloniously place and cause to be placed in the United States Post Office at Grants Pass, Oregon, for submission and delivery thereof by the Post Office Establishment of the United States according to the direction and address thereon, a certain letter, to-wit: a letter of the tenor following: [16]

"(Picture of Indian Girl) P.O. Box 677  
Kateri Tekakwitha  
Group  
Mount Reuben Mines  
Ajax :: California ::  
Hercules  
Grants Pass, Oregon

Francis J. Beckman  
1105 Locust Ave.,  
Dubuque, Iowa.

Dear Archbishop:

I arrived at the  
Portland. Everyth

but the payroll and other expenses. Now Walker just feels disgusted about this whole matter and I can't blame him. He phoned the attorney while I was in Portland and he thinks you are giving him the run around. Our engineer, Walker and myself had quite a talk

this morning. They say if there was never another drill run in the tunnel there's enough good ore to keep us running for 30 years in sight.

Now, I have had about all I can stand of this kind of work. There has to be \$30,000 right on the line here this week or I'll have to do something else. This thing "I promise this" and "I promise that" isn't going to get this mine going. I've got to jump out here and get a mill. I never saw so much ragging over anything and being a developed mine—everything to gain and nothing to lose—the only way I can look at it is that they just want to cheat me out of my interest, then wreck it. I work day and nite and I'm not going to do it any longer. Here is the payroll due, here's \$1600 for equipment, \$600 for dinamite, and I consider you are all getting a free ride here on the biggest thing in the world. It is just a shame for Roman Catholics to cause all this fuss when a man is trying to kill himself to make you money. God is my guide and there is no one going to get me to do anything only the right thing. I'm not signing anything other than what our deal is and I don't see why that you set. If you haven't got the money or can't get it wire me. I've got to do something else. I've taken in the Bear property, that is, on Josephine creek. I give \$6,000 of my notes that you have signed to a Mr. Neil Allen, attorney, to clean up the

deal for me. I have a sale for this property whereby if it is consummated it will make you all money, and I can do so if I am left alone. Now, don't use this as a promise but I will do my very best and I've got to have it in shape to do it. I'm doing 10 men's work right now and I'd continue doing it until I make this a howling success. How do you ever expect to get in operation when you have this *rangling* all summer long when you should be at work and producing. I don't understand what you are thinking about. These promises won't do it, so kindly write me or wire me if you aren't going to send any money and have it over with and I'll know what to do, because you have my word that I will not do anything until you give me your final. I'm driving over to St. John Bosco as soon as I mail this letter. I'm going to make a deal for that and just put a man in charge until such time that I can get over there and get it in shape, and I'll make that make money and plenty. Now we have \$175,000 of equipment laying idle just to satisfy one wandering priest to gain his point, regardless of what you do or think I never want to have anything to do with this man. I don't want to say any more about him and I want you to take him out of my house. He claims he has lost \$78,000 in Nevada and that is [17] nothing to me. But, I will say this, if he had been of any help and acted the way a man should he *would had*

a good living for the rest of his life right with me. But, when a man pulls these kind of stunts and done the things that you know nothing about I'm through, but I don't mention these things to any circular but I sure will if I have to, serve a notice on him by the authorities. Advise me at once by wire what your intentions are and after I make this a howling success you can sit down and deal with me in a very few minutes with a reasonable settlement. Now, this should be final. I get tired of writing, gnawing with every writing and fussing with everybody, when a person tries every way in the world to work for your interest and have turned down good propositions for no body but you. It's very disgusting. You have the last word and if Father Kessler don't want to help you, as you say he has to raise it for you, turn me loose and I'll raise it 'cause I think more of my word than any one I've ever found yet. I can't be nagged at day and nite and make you or anyone else any money.

Yours very truly,  
PHILLIP SUETTER"

which said letter, when so placed and caused to be placed in the Post Office of the United States, then and there was enclosed in an envelope bearing uncancelled United States postage at the first class rate and the following return card, direction and address, to-wit:

“Mount Reuben Mines  
Ajax :: California :: Hercules  
P. O. Box 677  
Grants Pass, Oregon

Francis J. Beckman  
1105 Locust Street  
Dubuque, Iowa”

and that the said person to whom the said letter and said envelope were so addressed was then and there one of said persons intended to be defrauded and whose money and property, according to said scheme and artifice, were to be obtained by means of the false and fraudulent pretenses, representations, and promises as aforesaid;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present: [18]

#### COUNT FIVE:

That said defendant, Phillip Suetter, hereinbefore named in the first count of this indictment, so having devised and employed the scheme and artifice to defraud described in the first count of this indictment, under the circumstances and conditions set out in the first count of this indictment, the allegations of which count descriptive of said circumstances, conditions, scheme and artifice, and of the connection of said defendant there-

with, being hereby incorporated in this count of this indictment by reference to the first count as if they were here repeated in full, did unlawfully, feloniously, wilfully and knowingly use a means of communication in interstate commerce in the sale of a security, to-wit: interests and units of the Suetter Placer Mines; that is to say, the defendant, as aforesaid, by the use of the facilities of the Western Union Telegraph Company, a means of communication in interstate commerce, did unlawfully, wilfully, feloniously and knowingly employ in the sale of a security as aforesaid the scheme and artifice to defraud as set forth in the first count of this indictment, the use of the facilities of the Western Union Telegraph Company, a means of communication in interstate commerce, being in the manner following, to-wit: the defendant on to-wit: the 29th day of September, 1940, at Portland, in the State and District of Oregon, and within the jurisdiction of this court, did knowingly, unlawfully, wilfully, fraudulently and feloniously send and cause to be sent a telegram, to be transmitted and delivered by the Western Union Telegraph Company in accordance with the direction and address thereon, said telegram being of the tenor following:

“1940 Sep 29 AM 12 32

PRA529 39 NT-Portland Org 28

Rev Stephen Bubahez—

923 West Ohio St Chego—

Have Spent Six Thousand to Date Your

Sure Not Going to Let These Birds Take Forty Thousand Worth of Machinery for the Amount They Claim Better Fly Out Save it Wire Western Union Satisfied Five or Less Will Do Job—

PHILIP SUETTER.' [19]

and that said person to whom said telegram was addressed was then and there one of said persons intended to be defrauded and whose money and property, according to said scheme and artifice, were to be obtained by means of the false and fraudulent pretenses, representations and promises, as aforesaid;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

#### COUNT SIX:

That said defendant, Phillip Suetter, hereinbefore named in the first count of this indictment, so having devised and employed the scheme and artifice to defraud described in the first count of this indictment, under the circumstances and conditions set out in the first count of this indictment, the allegations of which count descriptive of said circumstances, conditions, scheme and artifice, and of the connection of said defendant therewith, being hereby incorporated in this count of this in-

diction by reference to the first count as if they were here repeated in full, did unlawfully, feloniously, wilfully and knowingly, in the sale of a security, to-wit: interests of the Suetter Placer Mines, by the use of the United States mails, employ said scheme and artifice to defraud, the use of the United States mails being in the manner following, to-wit: the defendant on or about the 27th day of July, 1939, the exact date being to the Grand Jurors unknown, did knowingly, unlawfully, wilfully, fraudulently and feloniously cause to be received at Grants Pass, in the State and District of Oregon, and within the jurisdiction of this Court, a certain letter, to-wit: a letter of the tenor following: [20]

“Green Bay, Wis.,  
July 27th, 1939

Mr. Phillip Suetter,  
Grant's Pass, Oregon.

Dear Mr. Suetter:—

In accordance with my promise given to you on the 3d of this month, I am transmitting to you, herewith, my check for the sum of two thousand dollars to apply on the Josephine Mine.

I know nothing of mining nor of the situation as it exists in Oregon but as a general proposition I am of the opinion that you should confine your efforts to bring one mine—the Josephine—into production and let everything else go. When you have done this and

returned to us who have supplied the cash, the amount of our investment, there will be time enough to give consideration to other prospects. I remember you saying that the Josephine has enough for us all. Good and well, adhere strictly to the terms of our Trust Agreement. Too many irons in the fire bring only grief as you probably know by this time.

I am writing frankly to you on this phase of the matter, for I have told you what my plans are and why I am somewhat anxious about the progress of your mining operations.

Kindly give yourself the trouble to send me my certificate for three units of the Suetter Placer Mines—two paid for by the present check and one by the check of May 8th, last.

Now let me hope that your last trip eastward proved successful enough to enable you to resume operations for good. I will await farther developments with much anxiety. A word now and then in regard to the progress that you are making will be greatly appreciated. It is discouraging to remain entirely in ignorance of what is going on.

Believe me with sincere good wishes,

Very truly yours,

PAUL P. RHODE

Bp."

which said letter, when so received, was then and there enclosed in an envelope, with postage fully prepaid thereon, addressed to Phillip Suetter,

Grants Pass, Oregon, a further description of which envelope is to the Grand Jurors unknown, and that the said person to whom the [21] said letter and envelope were so addressed was then and there the defendant herein;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT SEVEN:

That said defendant, Phillip Suetter, hereinbefore named in the first count of this indictment, so having devised and employed the scheme and artifice to defraud described in the first count of this indictment, under the circumstances and conditions set out in the first count of this indictment, the allegations of which count descriptive of said circumstances, conditions, scheme and artifice, and of the connection of said defendant therewith, being hereby incorporated in this count of this indictment by reference to the first count as if they were here repeated in full, did unlawfully, feloniously, wilfully and knowingly, in the sale of a security, to-wit: interests of the Suetter Placer Mines, by the use of the United States mails, employ said scheme and artifice to defraud, the use of the United States mails being in the manner following, to-wit: the defendant on or about the 25th day of August, 1939, the exact date being

to the Grand Jurors unknown, at Grants Pass, in the State and District of Oregon, and within the jurisdiction of this Court, did knowingly, unlawfully, wilfully, fraudulently and feloniously place and cause to be placed in the United States Post Office at Grants Pass, Oregon, for submission and delivery thereof by the Post Office Establishment of the United States according to the direction and address thereon, a certain letter, to-wit: a letter of the tenor following: [22]

"(Picture of Indian Girl) Phil Suetter,  
President  
Oregon Mining Investment Co., Inc.  
Log Cabin  
Graves Creek, Oregon

August 25th 1939

Most Rev. Paul P. Rhode,  
Box 65  
Green Bay, Wis.

Dear Bishop Rhode:

Have been trying to get time to write you since receiveing your letter and check, for which I wish to thank you again, but I have been very busy trying to get settled down since my return. Would have forwarded your units but all of my office equipment and records are packed in Portland. I am getting ready to open up on the Josephine and will have my office there and will forward the units in a very short time.

Used the check you sent me to purchase some equipment especially a new tractor as I had little luck in getting the use of the one on the California. You know that I was to have the use of the one turned over to the ArchBishop, but they seem to *hve* it busy all of the time. I did not want any trouble with Monsignor so deemed it advisable to buy one of my own.

I am making quite a few changes on my operation on the Josephine which will cost about seven thousand dollars but will result in a much cheaper operation and deliver more return per yard of ground worked. I am doing the very best I can with the amount of money available to work with.

There will be considerable expense conected with getting the property back in operation and in as much as it is up to you and myself to darry the load. I would appreciate another five thousand to purchase the equipment. I will carry the payroll. This will result in quick returns.

Will appreciate an early and favorable reply as I am very anxious to get the property in operation.

The Government is putting in a bridge which will help us to eliminate a great deal of trouble and expense.

Thanking you again for your help, I am,

Yours very truly,

PHILLIP SUETTER"

which said letter, when so placed and caused to be placed in the Post Office of the United States, then and there was enclosed in an envelope, with postage fully prepaid thereon, addressed to Most Rev. Paul P. [23] Rhode, Box 65, Green Bay, Wis., a further description of which envelope is to the Grand Jurors unknown, and that the said person to whom the said letter and said envelope were so addressed was then and there one of the said persons intended to be defrauded and whose money and property, according to said scheme and artifice, were to be obtained by means of the false and fraudulent pretenses, representations, and promises as aforesaid;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 23d day of May, 1942.

A TRUE BILL

/s/ ARNOLD S. ROTHWELL

Foreman, United States

Grand Jury

CARL C. DONAUGH

United States Attorney

/s/ J. MASON DILLARD

Assistant United States

Attorney

Filed in open Court this 23rd day of May, A. D. 1942. G. H. Marsh, Clerk. By R. DeMott, Deputy Clerk.

Bail \$10,000.

CARL C. DONAUGH

United States Attorney

J. MASON DILLARD

Assistant U. S. Attorney [24]

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And Afterwards, to wit, on Wednesday, the 15th day of July, 1942, the same being the 9th Judicial day of the Regular July, 1942, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [25]

July 15, 1942

No. C-16073

UNITED STATES OF AMERICA

vs.

PHILLIP SUETTER

INDICTMENT:

Sec. 338, Title 18, and Sec. 77q (a) (1), Title 15,  
United States Code.

RECORD OF PLEA OF NOT GUILTY

Now at this day comes the plaintiff by Mr. J. Mason Dillard, Assistant United States Attorney,

and the defendant, above named, in his own proper person and by Mr. William J. Prendergast, Jr., of counsel. Whereupon the said defendant is duly arraigned upon the indictment herein, and for plea thereto states that he is not guilty as charged therein. [26]

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And Afterwards, to wit, on the 9th day of September, 1942, there was duly Filed in said Court, a Verdict in words and figures as follows, to-wit: [27]

[Title of District Court and Cause.]

### VERDICT

We, the Jury duly impaneled and sworn to try the above-entitled cause, do find the defendant, Phillip Suetter,

Not Guilty . . . as charged in Count One of the Indictment herein;

Not Guilty . . . as charged in Count Two of the Indictment herein;

Guilty . . . as charged in Count Three of the Indictment herein;

Guilty . . . as charged in Count Four of the Indictment herein;

Not Guilty . . . as charged in Count Five of the Indictment herein;

Guilty . . . as charged in Count Six of the Indictment herein; and

Guilty . . . as charged in Count Seven of the Indictment herein.

Dated at Portland, Oregon, this 9th day of September, 1942. 8:16 P.M.

SPENCER W. ALEXANDER  
Foreman

May the jury respectfully request leniency for the defendant.

Signed

S. W. ALEXANDER

[Endorsed]: Filed September 9, 1942. [28]

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And Afterwards, to wit, on the 8th day of October, 1942, there was duly Filed in said Court, a Motion for New Trial, in words and figures as follows, to wit: [29]

[Title of District Court and Cause.]

#### MOTION FOR NEW TRIAL

Comes now the defendant, Phillip Suetter, by and through his attorneys, W. J. Prendergast, Jr., and David Weinstein, and respectfully petitions the Court for a new trial, on the following grounds and for the following reasons:

##### I.

The verdict of the jury, in finding the defendant guilty on counts numbered: Three, Four, Six and Seven of the indictment, said counts charging the defendant with having violated Section 77q (a) (2) of Title 15 U.S.C.A. (Securities Act) is inconsistent with their finding that the defendant was not guilty of having violated Section 338 of Title 18, U.S.C.A. (Mail Fraud Act).

## POINT 1.

The jury by its verdict found that the defendant, Phillip Suetter, was not guilty of "using the mails in furtherance of a scheme, or artifice to defraud," but did find that defendant was guilty of having used the mails to sell securities in interstate commerce in furtherance of a scheme or artifice to defraud. Having by their verdict in the first instance found that the defendant was not guilty of the Mail Fraud charges, Counts One and Two of said indictment, they found, on the same evidence that defendant did use the mails in furtherance of a scheme or artifice to defraud, in the sale of securities.

In order to sustain a conviction of the defendant on any of the Counts of said indictment, it was necessary that the jury find, in the first instance, that there was some scheme or artifice to defraud. Under both Section 77q of Title 15 U.S.C.A. and Section 338 of Title 18, U.S.C.A. there must be some scheme to defraud.

The Courts have held that there is no inconsistency in a finding by a jury that there has been no violation of the Mail Fraud Statute, but that there had been [30] a violation of the Securities Act. However, defendant contends that in this case the verdict of the jury is inconsistent, not because of the findings of guilt, but because said findings of guilt were based on exactly the same evidence that was introduced to prove a violation of the Mail

Fraud Statute upon which defendant was found  
“not guilty.”

/s/      W. J. PRENDERGAST, JR.

/s/      DAVID WEINSTEIN

Attorneys for Defendant

State of Oregon,  
County of Multnomah—ss.

Due and legal service of the foregoing Motion  
for New Trial is hereby admitted in Multnomah  
County, Oregon, this 8th day of Oct. 1942.

/s/      J. MASON DILLARD

of Attorneys for United  
States.

[Endorsed]: Filed October 8, 1942. [31]

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And Afterwards, to wit, on Monday, the 19th day  
of October, 1942, the same being the 90th Judicial  
day of the Regular July 1942, Term of said Court;  
present the Honorable Leon R. Yankwich, United  
States District Judge for the Southern District of  
California, presiding, the following proceedings  
were had in said cause, to wit: [32]

[Title of District Court and Cause.]

October 19, 1942

## Indictment:

Sec. 77q (a) (1), T. 15, and Sec. 338, T. 18,  
U. S. C. A.

**ORDER DISMISSING COUNTS THREE  
AND FOUR**

Now at this day comes the plaintiff by Mr. J. Mason Dillard, Assistant United States Attorney, and Mr. Charles E. Wright, Attorney for the Security and Exchange Commission, and the defendant, above named, in his own proper person and by Mr. Wm. J. Prendergast, Jr., and Mr. David Weinstein, of counsel; whereupon, this cause comes on for a further hearing upon the motion of said defendant for a new trial upon Counts Three, Four, Six and Seven of the indictment herein; and the Court having heard the arguments of counsel and being fully advised in the premises,

It Is Ordered that said motion as to Counts Three and Four of the said indictment be, and the same is hereby, allowed; and it appearing to the Court from the records in this cause that there was not sufficient evidence to sustain a verdict of guilty as to Counts Three and Four, it is ordered that said counts be, and each of the same is, hereby dismissed.

It Is Further Ordered that the said motion be, and the same is hereby, denied as to Counts Six and Seven of said indictment. [33]

And Afterwards, to wit, on Monday, the 19th day of October, 1942, the same being the 90th Judicial day of the Regular July, 1942, Term of said Court; present the Honorable Leon R. Yankwich, United States District Judge, for the Southern District of California, presiding, the following proceedings were had in said cause, to wit: [34]

In the District Court of the United States  
for the District of Oregon

October 19, 1942

No. C-16073

UNITED STATES OF AMERICA

vs.

PHILLIP SUETTER,

Defendant.

Indictment:

Sec. 77q (a) (1), T. 15, and Sec. 338, T. 18,  
U. S. C. A.

### SENTENCE

Now at this day comes the plaintiff by Mr. J. Mason Dillard, Assistant United States Attorney, and Mr. Charles E. Wright, Attorney for the Security and Exchange Commission, and the defendant, above named, in his own proper person and by Mr. Wm. J. Prendergast, Jr., and Mr. David Weinstein, of counsel; and it appearing to the Court that the said defendant has been heretofore found guilty

by the verdict of a jury, of the offenses charged in Counts Six and Seven in the indictment herein,

It Is Adjudged by the Court that the said defendant, Phillip Suetter, is guilty of the offense of unlawfully, feloniously, wilfully and knowingly, in the sale of a security, to-wit: interests of the Suetter Placer Mines, by the use of the United States mails, employ a scheme and artifice to defraud, by causing to be received at Grants Pass, in the State and District of Oregon, and within the jurisdiction of this Court, a certain letter dated July 27, 1939, addressed to Mr. Phillip Suetter, Grants Pass, Oregon, as charged in Count Six of the indictment; that he is guilty of the offense of unlawfully, feloniously, wilfully and knowingly, in the sale of a security, to-wit: interests of the Suetter Placer Mines, by the use of the United States mails, employ a scheme and artifice to defraud, by placing in the Post Office of the United States at Grants Pass, Oregon, for submission and delivery thereof by the Post Office Establishment of the United States according to the direction and address thereon, a certain letter dated August 25th, 1939, addressed to Most Rev. Paul P. Rhode, [35] Box 65, Green Bay, Wis., as charged in Count Seven of the indictment.

Whereupon, the said defendant, waiving time for passing of sentence for the offenses charged in Counts Six and Seven of the indictment, is asked if he has anything to say why sentence should not now be pronounced against him, and no sufficient cause being shown,

It Is Further Adjudged that the said defendant, Phillip Suetter, be imprisoned for a term of Two and one-half years for the offense charged in Count Six of the indictment herein; that he be imprisoned for a term of Two and one-half years for the offense charged in Count Seven of the indictment herein; that said terms of imprisonment run concurrently, a total sentence of Two and one-half years, and that said defendant be committed to the custody of the Attorney General of the United States or his authorized representative, who will designate the place of confinement of said defendant, and that said defendant stand committed until this sentence be performed or until he be otherwise discharged according to law.

Whereupon, It Is Ordered that said defendant, Phillip Suetter, be taken into custody by Mr. Fred H. Norman, a bailiff of this Court, to be by him delivered to the United States Marshal for the District of Oregon, and that upon his being received by the United States Marshal for the District of Oregon, the bond given by said defendant for his appearance, at this time be, and the same is hereby exonerated from further liability in this behalf.

Dated at Portland, Oregon, this 19th day of October, 1942.

LEON R. YANKWICH  
Judge

[Endorsed]: Filed October 19, 1942. [36]

And Afterwards, to-wit, on the 23rd day of October, 1942, there was duly Filed in said Court, a Notice of Appeal, in words and figures as follows, to wit: [37]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Comes now the above entitled defendant and respectfully files this, his Notice of Appeal, and in conformity with the rules of the Court, gives the following information:

1. The name of the Appellant is Phillip Suetter, and his address is City of Portland, County of Multnomah, State of Oregon.
2. The names of the Appellant's attorneys are William J. Prendergast, Jr. and David Weinstein, 314 Spalding Building, Portland, Oregon.
3. The defendant was tried and convicted of violation of two counts, charging violation of Section 77q (a) (2) of Title 15 U.S.C.A. (Securities Act).
4. The date of the entry of the Judgment was October 19, 1942.
5. The judgment sentences the defendant to serve a period of two and one-half years in an institution to be selected by the Attorney General of the United States upon each of the counts upon which the defendant was convicted, said sentences to be served concurrently.
6. The defendant, at this time, is confined in the County Jail of the County of Multnomah, City

of Portland, State of Oregon, in the custody of the United States Marshal for the District of Oregon.

I, the above named Appellant, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

(Signed) PHILLIP SUETTER,  
Appellant.

Dated at Portland, Oregon, this 23rd day of October, 1942. [38]

### GROUNDS OF APPEAL

#### Point 1.

##### No Evidence to Sustain Verdict, and Verdict Inconsistent With Facts

The jury by its verdict found that the defendant, Phillip Suetter, was not guilty of "using the mails in furtherance of a scheme, or artifice to defraud," but did find that the defendant was guilty of having used the mails to sell securities in interstate commerce in furtherance of a "scheme or artifice to defraud." Having by their verdict in the first instance found that the defendant was not guilty of the Mail Fraud charges, (having found no scheme to defraud) Counts One and Two of said indictment, they found, on the same evidence that the defendant did use the mails in furtherance of a scheme or artifice to defraud in the sale of securities.

## Point 2.

## Court's Refusal to Require the United States to Designate Counts Toward Which Evidence Was Directed.

In the case at Bar, timely objection was made to the introduction of certain evidence and motions to have the evidence limited to certain counts in the indictment. This Court failed to have any of the evidence introduced by the United States confined to any certain count, or group of counts in the indictment, and allowed all the evidence, over objection by the defendant, to be introduced as showing a general scheme or artifice to defraud on the part of the defendant. Thus the same evidence was submitted to the jury to prove a violation of the Mail Fraud Counts of the indictment, and also a violation of the Security Act Counts of the indictment. The jury could not consistently find that there had been no violation of the Mail Fraud Counts, requiring some scheme or artifice to defraud, and use of the mails, and a violation of the Securities Act Counts, requiring some scheme or artifice to defraud, by use of the United States Mails, under precisely that same evidence, and it was error by the Court to allow such evidence to be admitted over the defendant's objection to prove a general scheme or artifice to defraud. [39]

## Point 3.

## Court's Refusal to Direct a Verdict.

Defendant having moved at the end of the Government's case for a directed verdict and renewed

the same at the end of the trial, the Court, in both instances, refused to direct a verdict in favor of the defendant. Defendant contends that there was no evidence upon which the jury could have a verdict of guilty of violation of Section 77q (a) (2) of Title 15, U.S.C.A. (Securities Act); as in both instances, the basis of the violation of the Acts is some scheme or artifice to defraud, and in the absence of such scheme or artifice to defraud, there can be no crime .

State of Oregon,  
County of Multnomah—ss.

Due and legal service of the foregoing Notice of Appeal is hereby admitted in Multnomah County, Oregon, this 23rd day of October, 1942.

CARL C. DONAUGH,  
United States District Attorney.

By WILLIAM H. HEDLUND,  
Deputy.

[Endorsed]: Filed October 24, 1942. [40]

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And Afterwards, to wit, on Saturday, the 24th day of October, 1942, the same being the 95th Judicial day of the Regular July, 1942, Term of said Court; present the Honorable Leon R. Yankwich, United States District Judge for the Southern District of California, presiding, the following proceedings were had in said cause, to wit: [41]

[Title of District Court and Cause.]

## ORDER ALLOWING BAIL AND SETTING BOND

The above entitled matter having come on before the Court on this 24th day of October, 1942, upon the application of the defendant, Phillip Suetter, through his attorneys, W. J. Prendergast, Jr. and David Weinstein, and the defendant having on the 23rd day of October, 1942, duly filed his Notice of Appeal, and

It Appearing to the Court that said Notice of Appeal and Grounds of Appeal raises substantial questions of law to be determined by such appeal,

It Is Therefore Ordered, Adjudged and Decreed that pending said appeal the execution of the judgment be stayed, and

It Is Further Ordered, Adjudged and Decreed that the defendant, Phillip Suetter, be released upon bail upon his filing of an undertaking of a surety company in the sum of Ten Thousand and no/100 (\$10,000.00) Dollars, said bond to be approved by any Judge of the above entitled Court or the United States Commissioner.

Dated this 24th day of October, 1942.

/s/ LEON R. YANKWICH,  
Judge.

[Endorsed]: Filed October 24, 1942. [42]

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And Afterwards, to wit, on Saturday, the 31st day of October, 1942, the same being the 101st Judicial day of the Regular July, 1942, Term of

said Court; present the Honorable Claude McCollough, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [43]

[Title of District Court and Cause.]

October 31, 1942.

Section 77q (a)(1). Title 15, and Section 338,  
Title 18, U.S.C.A.

## ORDER RELEASING DEFENDANT ON BOND

Now at this day comes the defendant by Mr. William J. Prendergast, Jr., and presents to the Court a bond in the sum of \$10,000, which is duly approved by the Court and It Is Ordered that said defendant be released from custody. [44]

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And Afterwards, to wit, on the 14th day of April, 1943, there was duly Filed in said Court, a Prae-  
cipe for transcript in words and figures as follows, to wit: [45]

[Title of District Court and Cause.]

## PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Above Entitled Court:

Please prepare transcript on appeal to include:

1. Indictment.
2. Plea.
3. Verdict.
4. Motion for New Trial.
5. Order on Motion for New Trial.
6. Sentence.

7. Notice of Appeal.
8. Order Fixing Bail Pending Appeal.
9. Order Staying Execution of Judgment and releasing on Bail.
10. Praeclipe for transcript of Record.

DAVID WEINSTEIN,  
Of Attorneys for Appellant.

State of Oregon,  
County of Multnomah—ss.

Due and legal service of the foregoing Praeclipe is hereby admitted in Multnomah County, Oregon, this ..... day of April, 1943.

J. MASON DILLARD,  
Of Attorneys for Appellee.

[Endorsed]: Filed April 14, 1943. [46]

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#### CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD

United States of America,  
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered 1 to 46 inclusive, contain a transcript of the matters of record in said court pertinent to the appeal and as designated in the praecipe for transcript filed by the appellant in a criminal case in said court numbered C-16075, in which the United States of America is plaintiff and appellee and Phillip Suetter is the defendant and appellant; that I have

compared the foregoing transcript with the original thereof and that the same is a full, true and correct transcript of the said record and proceedings had in said court in said cause in accordance with the rules and practice for transcript filed in said cause by said appellant.

I have annexed to and I am transmitting with the said transcript the original Assignment of Errors and the original Bill of Exceptions filed in said cause by said appellant.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 15th day of April, 1942.

[Seal]

G. H. MARSH,

Clerk. [47]

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. C-16-073

PHILLIP SUETTER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BILL OF EXCEPTIONS ON BEHALF OF THE  
DEFENDANT IN THE ABOVE ENTITLED  
CAUSE.

Be it remembered that heretofore the grand jury of the United States in and for the District of Ore-

gon did find and return to and before the above entitled Court its indictment against the defendant, Phillip Suetter, and that at the fall term of the District Court of the United States for the District of Oregon, the defendant named above, upon being arraigned, appeared in person and entered his plea of Not Guilty to all the charges contained in said indictment.

Thereafter, on the 31st day of August, 1942, the above cause came on for trial before the Hon. Leon R. Yankwich, one of the judges of said Court, and a jury duly impaneled, J. Mason Dillard, and Charles E. Wright, appearing as counsel for the United States, and W. J. Prendergast, Jr. and David Weinstein appearing as counsel for the defendant.

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The United States, to maintain its case, called as a witness

MR. RALPH T. MONTAG,

one of the persons alleged in the indictment to have been defrauded, who testified that he had known the defendant, Phillip Suetter, about 15 years; that he became acquainted with the defendant, Suetter, in North Portland, Oregon, where they were both engaged in business; that he, Montag, had had invested some \$5,000 with the defendant Suetter in 1934, in the mining business in Southern Oregon.

There was offered in evidence, after identification by the witness, Government Exhibit I for identification, a letter dated February 12, 1934, addressed to the witness Montag and signed by the

(Testimony of Ralph T. Montag.)

defendant Suetter, the material parts of which are as follows:

"Dear Sir: I have an option on the George Brothers Claim in Josephine County, state of Oregon. Before exercising this option it is necessary that some prospecting be done, and it should not cost to exceed \$250.00.

"For said money advanced by Ralph Montag if this option is exercised and approved, it is to be a 50-50 proposition; Money is to be repaid of the proceeds of claims.

"If when the prospecting work is done we determine to exercise our option, it will require the payment of \$1,000 on the exercise of the option and the balance in accordance with the terms of the option." [1\*]

To the admission of said Exhibit I the defendant, by his counsel, then and there objected, on the grounds and for the reason that the said Exhibit I was incompetent, and on the further ground and for the further reason that the United States should be compelled to elect, or designate, as to which charge, or charges, in the indictment the Exhibit was directed, whether to the mail fraud counts or to the securities counts, which said objection was then and there over-ruled and an exception allowed.

The witness, Montag, testified that Government's Exhibit I was one of the first communications he had received from the defendant Suetter in regard

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\*Page numbering appearing at foot of page of original Bill of Exceptions.

(Testimony of Ralph T. Montag.)

to the Josephine mines and further identified Government's Exhibit 2,—a letter dated February 12, 1934, from the defendant, Suetter, to the witness Montag, the material portions of which are as follows:

"Mr. Ralph Montag, City. Dear Sir: I have an option on eleven placer claims in Josephine County, Oregon, with 1200 feet of pipe, a #1 Giant, two cabins, together with all equipment on the premises for \$8,000.

"I have 60 days to prospect this property, which requires \$250.00 for grub powder etc. If said option is approved and exercised, \$1,000 is to be paid and after the first year \$2,000 is to be paid, and the balance of \$3,000 is to be paid at the end of the 3rd year and receive deed for same.

"In consideration for certain sums to be advanced by you to gain control of the above optioned eleven placer claims not to exceed \$175.00 you are to receive one-half interest of all net recovery of same.

"You are also to receive one-half interest in any other claims that may be financed and operated at both our expenses."

To the admission of said Exhibit 2 the defendant, by his counsel, then and there objected, on the grounds and for the reason that the same was irrelevant, immaterial and incompetent, and on the further grounds and for the further reason that the United States should elect or designate as to which

(Testimony of Ralph T. Montag.)

count or counts in the indictment the evidence was directed, based on the decision in the case of the United States vs Jarvis 90 Fed (2) 242. The Court over-ruled the objection by the defendant and an exception was allowed.

The witness testified in regard to Government Exhibit 2 that he had received the letter in the ordinary course of the mails and understood that it related to the placer claims called the Josephine claims and identified Government Exhibit 3, a letter dated June 4, 1934 from the defendant Suetter to the [2] witness Montag the material portions of which are as follows:

“Dear Ralph: I am enclosing herewith a statement of our operation as of June 1, showing the expenditures made up to that time.

“You will note we have spent \$7,610.00 for equipment, which includes the shovel, cletrac, International trucks, bulldozer, forge, welding outfit and numerous other tools which are necessary for an operation of this nature.

We have 12 men on the payroll, all good men, nearly all working for \$1.00 a day and their board, and in that connection will state that we are giving them good meals at a cost of 45c per day per man. I find that meat is cheaper here than in Portland.

“Everything is now on the property, the men are busy building the washer frame for the revolving screen.

“We should be in production now but owing

(Testimony of Ralph T. Montag.)

to delays in getting the road grader and also in not having the bulldozer sooner we have been held up and again I repeat I must be here on the job day and night. Am moving the cook house and all to the mine today.

"I need some more money and can't leave the job as every time I leave it sets us back 3 or 4 days.

And attached to the letter the following:

"Cash paid out in June 1934; General operating expense, \$273.11; groceries and meat \$188.70; Gas and oil \$329.39; repairs and maintenance \$230.75; lumber \$683.61; William George \$5,400.00; wages \$632.50; total \$7,735.60. Cash received during the month of June 1934, Ralph Montag \$350.00; Ralph Montag \$7,500.00; total \$7850.00"

To the admission of said Government's Exhibit 3, the defendant, by his counsel, then and there objected on the grounds and for the reasons that the same was irrelevant, immaterial and incompetent and on the further ground and for the further reason that the United States should be compelled to elect or designate as to which count or counts in said indictment the evidence was directed. The Court overruled the objection and allowed an exception.

The witness Montag, referring to Government's Exhibit 3, testified that he had disbursed between seven and eight thousand dollars for the operation

(Testimony of Ralph T. Montag.)

of the mines; that the mine was in operating condition and that he expected a "clean up" in the 1934-35 season; that there had never been any "clean-up" on the properties as far as he knew.

After identification by the witness, the United States offered Government's [3] Exhibit 4, a note for the sum of \$7,500 dated June 23, 1934, to the Grant's Pass and Josephine Bank, signed by the witness, Ralph T. Montag, to the admission of said Government's Exhibit 4, defendant by his counsel, then and there objected on the ground and for the reason that the same was immaterial, irrelevant and incompetent to the issues of the case, which said objection was then and there overruled and an exception allowed.

The witness Montag testified that Government's Exhibit 4 was a promissory note in the sum of \$7,500.00, executed by the witness, and Phillip Suetter, payable 90 days after date to the Grant's Pass and Josephine Bank.

The United States offered Government's Exhibit 5, a promissory note in the sum of \$2,000.00 dated July 10, 1934, payable in 90 days, to the Grants Pass and Josephine Bank, signed by the defendant Suetter and the witness Montag to the admission of which the defendant by his counsel, then and there objected, on the grounds and for the reason that the same was irrelevant, immaterial, and incompetent, which objection was overruled and an exception allowed.

(Testimony of Ralph T. Montag.)

The witness Montag further identified Government's Exhibit 6, a promissory note for \$10,000.00 signed by the defendant Suetter at Grants Pass, Oregon, dated June 29, 1934, and attached to a mortgage on mining claims, and running in favor of the witness Montag covering the following described property.

"The Hunt and George Mine, located by W. D. Hunt and W. D. George; 'The Mud Flat Placer Claim;' The Whiteside No. 2 placer mining claim; The Watts Extension No. 1 placer claim containing 10 acres more or less; The Stockbarger placer claim and The Battle Bar placer claim."

To the admission of said Government's Exhibit 6, defendant by his counsel then and there objected on the ground and for the reason that the same was irrelevant, immaterial and incompetent, which objection was overruled and an exception allowed.

The witness testified that he had had conversation with the defendant, Suetter, about the property described in the real estate mortgage; that the defendant Suetter always referred to this property as the Josephine property; that the note had never been paid nor the mortgage satisfied and that the obligation was still a legal and subsisting obligation from the defendant Suetter to the [4] witness Montag.

The witness further testified, concerning Government's Exhibits 4 and 5, that those notes had not

(Testimony of Ralph T. Montag.)

been paid; and that both the obligations covered by Exhibits 4 and 5 and 6 were still unpaid.

The United States then offered in evidence, after identification by the witness Montag Government's Exhibit 7, a letter dated September 23, 1936, addressed to the witness, Montag, and signed by the defendant, Suetter, the material portions of which are as follows:

"Ralph Montag, 2011 N. Columbia Blvd.

"Dear Friend: Just received your letter and will try and answer in full. First the deal has been made with the Bishop. We hold papers to that effect signed by him. He was to turn in a large amount of securities to be sold; also he has several hundred thousand dollars worth of oil paintings which are being sold and have heard that considerable amount have already been sold. In the Bishop's first plan he was drawing the money out of the general church fund.

"I hope this letter explains all details. I do not want to and do not think it good policy to ask the Bishop or any of the others for any money at this time until the first payment is at hand. When I wrote you what I really needed is \$2000.00 but I cut it in half and asked for only \$1,000.00. At the final end we will have to make a trip to Iowa with several of the Fathers most any day with running expenses before your check came and with future expenses also above trip to Iowa I am in great

(Testimony of Ralph T. Montag.)

need of other \$500.00. I hope this letter explains all details and please understand that the above agreements are in writing and duly signed and are held by us. Please do not delay check as do not want to be held up for the want of expense money. Check today went for previous expenses. Answer by air. Will return large part of your investment from first payment.

Yours truly,  
PHILLIP SUETTER."

The witness testified that he had received Government's Exhibit 7 in the ordinary course of mail at or about the time it was dated.

The United States then offered in evidence Government's Exhibit 8, a letter dated August 4, 1936, from the defendant Suetter to the witness Montag, the material portions of which are as follows:

"Dear Friend: I landed Chicago morning of 17th. Met E. H. at Palmer House. Had quite talk. Told me the set up and showed all letters received from different men of [5] group. I find very clean deal and square, which we have nothing to worry about whatever. This deal is made which you have got nothing to fear that you will not be responsible or liable for anything. Your name is not mentioned in any way. I come to the conclusion the fathers' deal is little slower but sure and no grafting.

"Now Ralph, I can see why this deal was

(Testimony of Ralph T. Montag.)

slowed up for lack of expense money which no doubt we should have furnished it. In checking up on him I find that he is in the hole almost \$500.00. In April when we received wire from E. H. as you know the father was ready to pay \$10,000.00 and business manager and other fathers wanted to leave at once for the mine. E. H. has proven to me that \$10,000.00 would not make the set that they would expect to see. Their first money will be \$25,000.00 or better. As soon as this first money is turned over to us I am leaving for the mine and E. H. will stay gathering more money till I get the outfit ready for him to leave. I will wire. By that time be plenty of water. They can't stay only four five days. I have got to have things ready and in shape when they arrive at the mine. I hope you have had a good trip. I am having a hard time for expense money. This bill of E. H. should be paid. I would hate for anything to happen because the deal is made.

“Please answer. Phil”

The witness, Montag, testified that he had received Government Exhibit 8 in the ordinary course of mail.

The United States thereupon offered Government Exhibit 9, a letter dated November 1, 1934, addressed to the witness, Montag, and signed by the defendant, Sutter, the material portions of which are as follows:

(Testimony of Ralph T. Montag.)

"Friend: Got in last night 12:20. Looked at my mail. Find I am overdrawn at the bank. River has come up; that we had to bring giants and my lumber over on cable. I am going look at 2 hoists in morning. I have got to have them to keep boulders out. We can't afford to move boulders with giants, put through ten yards of dirt while you are moving one boulder. Rain is not stopping me. Too valuable dirt to move Boulders with water. I am going to put 3,000 yards a day through outfit. My intention is to get every dollar of our money out 60 days from start. We start last of next week. I am buying \$3,000.00 equipment for about \$500.00. I got to have 1,000 feet of pipe. I am looking at some tomorrow. Hustle them fellows up on the screen; got to have it.

Yours truly, Phillip Suetter".

Dated November 1, 1934.

Referring to Government Exhibit 9, the witness testified he had received the same in the ordinary course of mail at or about the time it was dated.

The United States then offered in evidence Government Exhibit 10, a letter [6] dated September 30, 1936, from the defendant Suetter to the witness Montag, the material portions of which are as follows:

"Dear Friend: Your letter recieved this A. M. and small check enclosed. I can't understand that this matter is a puzzell to you, but I am writing to get you all straight. I am not

(Testimony of Ralph T. Montag.)

wanting to tell you that you get \$329,000.00 in return. That was a little error that the stenographer made. It is \$320,000.00 for 49%. Now get that right. And I am not trying to make you believe that that's what you get in return. I only told you what the Bishop is buying—49% of the property. Then went on and explained just how the deal is to be made.

“now then it is all useless for you to talk about a deal of this kind. You know you might pull that stuff in a town like Portland, and you may be able to say that to people that have been on this ground, and have tested—but here are people that have never seen the ground and have never questioned what Hogan has told them.

“Since writing you I had Hogan call up the Bishop on Monday. The Bishop said he was sorry he had delayed him, but he is coming here tomorrow. The deal is just as I told you it going to be—from \$25,000.00 to \$100,000.00 is what it sounded like to Hogan, but the money has got to clear through the Portland Bank.—now get this into your head. And further I have stepped on Hogan, and it has brought it to a head.

“This \$250.00 that you sent me I got this morning is not going to get me anywhere, so above all you will have to send me that much more to get by at all.

“My reason for wanting to get this over to

(Testimony of Ralph T. Montag.)

you is that I don't want you to spring a letter on me or to get the idea that we are going to get \$329,000.00 but only \$320,000.00.

"Now send me the balance of this \$1,000.00 without fail and I will return you all the moneys you advanced for this trip as soon as I get back to Portland with said check."

"(Signed) PHILLIP SUETTER."

The United States then offered in evidence Government's Exhibit 11, a promissory note dated January 6, 1941, for \$9,500 payable 6 months after date, to the U. S. National Bank of Portland, signed by the witness, Ralph T. Montag.

The United States also offered in evidence its Exhibit 12, a carbon copy of a letter dated September 28, 1936, from the witness Montag to the defendant, Suetter, the material portions of which are as follows: [7]

"Dear Phil: I was very much surprised to learn over the phone that you had not seen the Bishop as you stated when you left Portland that you would see the Bishop and get the money and be back in Portland in about three weeks. It has been considerable longer than three weeks and you advise me that you have not seen him and that you are still waiting for E. H. "—to make good just as you were in Portland." "In your letter you do not state when you are to get the money and in your phone conversation you did not know but thought it might take two weeks longer. Now

(Testimony of Ralph T. Montag.)

you might as well know it now that I am just as hard up as you and Hogan and this writing and phoning me for money is of no use as I keep expecting money from you and instead of getting it to help me out I keep getting calls from you. I have not the money to send you and you must believe that. I am hard up myself. You seem to think that I do not have to make money and can keep on writing checks indefinitely.

"When you left here I gave you all I could spare and have since scraped up \$500.00 and sent to you and thought that I had surely done more than my part for you and Hogan to whom I feel no obligation whatsoever. It is useless to keep reminding me that I am to send \$1,000.00.

"You can act as you see fit in Chicago, but it seems to me that I would tell Hogan and The Bishop that you had to have that money at once and that you were returning to Portland at once and that the deal was off and you would raise the money in Portland. This might cause them to quit stalling and make a real effort to make good with something besides promises. Please do not wire, write or phone me for more money as it cannot be had. As mentioned above I have not got it. So govern yourself accordingly."

Government's Exhibit 13, a copy of a letter dated November 3, 1930, from the witness, Montag, to the

(Testimony of Ralph T. Montag.)

defendant, Suetter, together with a telegram dated November 3, 1936, from the defendant, Suetter, to the witness, Montag, the material portions of which are as follows:

Mr. Phillip Suetter at The Stevens Hotel, Chicago, Ill., signed by Ralph T. Montag.

"I received a telegram from you today reading as follows:

"Bishop here last night for one hour between trains. Have date to meet in Detroit for final financial settlement. Expect to return home after settlement. Please wire as requested five. Do not fail me as this will be final!

"Signed PHILLIP SUETTER

"I am enclosing herewith my check for \$500.00 per above with the understanding that you are now making a real financial settlement with the Bishop along the lines you have been writing and wiring me about. If you are not making such a financial settlement do not [8] use this check but return it to me. I have had to do some real work to get this money and do not want it used if you are not making the deal as suggested in your former letters and wires.

"The reason I am compelled to take such action is that for the past year or more you have been assured by you and Hogan that the deal was made and then it turned out it was not made and I want no more of such misleading actions or promises that are not made good.

(Testimony of Ralph T. Montag.)

I do not want to appear as calling down or in any way finding fault with you personally but I sure do not want to be mislead any more nor will I be. Your telegram states that 'This will be final' which I understand to mean just what it says and that now you will be sending the financial settlement to the First National Bank of Portland for adjustment upon your arrival.

"If this above is not in accordance with what you intend to do please do not cash this check as the check is all sent in accordance with your wire.

"With best wishes and trusting that your deal will be just what you wanted and worked hard to get, I remain, Yours truly."

Government's Exhibit 14, a letter dated June 6, 1937, from the defendant, Suetter, to the witness, Montag, as follows:

Hotel Julien, Bebuque, Dubuque, Iowa.

"Ralph T. Montag"

"Dear Friend: Sunday morning arrived here. Had appointment with Archbishop but he will not arrive until 3 P. M. so am going to try write to you a few lines again with plenty of time.

"I mailed you a lot of papers this A. M. but —and done in a hurry, but at that I answered all your questions, or, rather gave you facts of Mrs. Hill. Now then, that kind of gossip as

(Testimony of Ralph T. Montag.)

you call it, has existed for me continually for me ever since I was in Southern Oregon but I never told you or least wanted to bother you because there is not many can take it.” “I am going—So I am going to see Bishop at 3 P. M. today, then going to Chicago, then to Marion, Indiana, then back to Crown Point, then Indianapolis, then Cincinnati, to St. Louis, then on my way home. In this round I expect to sell quite a few of these notes and few units. I am not working very hard on units till I get this first set up going. Then I got few people has got real money and invite them out but your name doesn’t appear nowhere, only between ourselves, and you can rest assured it’s going to be done in honest upright way and no after”—“and it will be highest ever hit Southern Oregon when I get done, and won’t be long but it takes time and money and knowing how, and this is not weak sister’s job or no slicker’s job either, but just have faith in God and, all mighty—in God all mighty and holy family.” “Just have faith in God all [9] mighty and holy family.

“Yours truly PHILLIP SUETTER.”

Government’s Exhibit 15, “Suetter Placer Mines Trust Agreement” dated January 30, 1937, signed Phillip Suetter, trustee, Francis J. Beckman, as follows:

“This trust agreement, dated the 2nd. day

(Testimony of Ralph T. Montag.)

of January, A. D. 1937, is to certify that Phillip Suetter, of Portland, Oregon, hereby declares that he has taken title, as Trustee, to the mining claims on the following described real estate:

- “1. The Hunt and George Mine, located by W. D. Hunt and W. D. George;
- 2. The Mud Flat placer claim, located by Alex George containing twenty acres;
- 3. The Whitesides #2 placer mining claim containing 140 acres;
- 4. The Watts Extention #1 placer claim containing 10 acres;
- 5. The triangle placer claim, containing about 8 acres;
- 6. The Stockbarger placer claim, formerly held by John Stockbarger;
- 7. The Battle Bar placer claim;
- 8. The Missing Link placer claim, located by W. D. George and Alex George;

“Together with all ditches, ditch rights, water and water rights appurtenant to the said mining property or any part thereof, and all right, title, and interest of any of the undersigned grantors therein and thereto, together with all buildings and improvements, machinery or mining equipment, of whatsoever nature now being upon said mining ground.

“That it is deemed and declared by the said Trustee that all of said mining claims on the property hereinbefore described shall consist of 800 undivided units; that he proposes to sell

(Testimony of Ralph T. Montag.)

not to exceed 350 of said 800 undivided units and to retain the balance for himself as an individual beneficiary; that the said Phillip Suetter as trustee, shall have the management and control of said property and the selling, mining and operation thereof; that from the income thereof, he shall pay all taxes or assessments levied against the property, insurance, cost of improvements, repairs and maintenance, and shall account to the unit holders hereunder at the end of each calendar year; that he shall keep a true and accurate set of books and accounts showing the income and disbursements of the trust, and for his services in the management of the trust and the operation of said property, the said Phillip Suetter shall receive a monthly salary or compensation of \$250.00 payable out of the income of said trust.

"It is understood and agreed between the Trustee hereunder and all parties who may become unit holders hereunder, that the Trustee is to sell not to exceed 350 undivided units [10] out of the total of 800 undivided units; that the proceeds from the sale of said 350 undivided units, or any part thereof, shall be used solely for the purchase of necessary machinery and equipment to enable the Trustee to conduct the mining operations on said property, and also to operate the said mines on said property. In the event the Trustee sells any units over and above 350, the proceeds from the sale of the

(Testimony of Ralph T. Montag.)

additional units may be retained by the said Phillip Suetter, individually.

"It is understood that for each \$1,000.00 paid to said Trustee, by any person, firm or corporation, under the terms and conditions of this trust, the Trustee will issue to said person, firm or corporation making said payment, a certificate of ownership for one undivided unit in said trust, which certificate is to be signed by the Trustee hereunder, and be subject to the terms and conditions herein contained.

"It is understood and agreed between the parties hereto and by any person, firm or corporation who may be entitled to any interest under this trust, that for each undivided unit hereof owned by any person, firm or corporation, said person, firm or corporation shall be entitled to 1/800ths of the net profits or net income thereof, and upon the sale of the whole said property, to 1/800ths out of the net proceeds of said sale."

Government's Exhibit 16, a group of checks from the witness, Ralph T. Montag, to the defendant, Phillip Suetter, on the following dates and in the following amounts:

March 7, 1934	\$ 500.00
March 13, 1934	\$ 50.00
March 27, 1934	\$ 450.00
May 23, 1934	\$ 500.00
May 29, 1934	\$1,000.00
June 14, 1934	\$ 350.00

(Testimony of Ralph T. Montag.)

June	20, 1934	\$ 50.00
July	31, 1934	\$1,250.00
Aug.	8, 1934	\$1,000.00
Aug.	22, 1934	\$1,000.00
Sept.	8, 1934	\$1,000.00
Sept.	17, 1934	\$1,000.00
Oct.	8, 1934	\$ 750.00
Oct.	20, 1934	\$1,000.00
Jan.	8, 1935	\$ 50.00
Jan.	14, 1935	\$ 750.00
Jan.	16, 1935	\$1,750.00
Feb.	7, 1935	\$ 100.00
Feb.	27, 1935	\$ 346.50
April	11, 1935	\$ 150.00
April	29, 1935	\$ 100.00
May	7, 1935	\$ 500.00
May	21, 1935	\$ 250.00
June	6, 1935	\$ 100.00
June	10, 1935	\$ 31.94
July	11, 1935	\$ 150.00
July	13, 1935	\$ 31.94
Aug.	14, 1935	\$ 150.00

[11]

Sept.	9, 1935	\$ 100.00
Sept.	25, 1935	\$ 400.00
Nov.	2, 1935	\$ 100.00
Nov.	16, 1935	\$ 50.00
Dec.	5, 1935	\$ 500.00
Jan.	13, 1936	\$ 31.94
Jan.	16, 1936	\$ 100.00
Jan.	23, 1936	\$ 258.00
March	17, 1936	\$ 25.00
April	1, 1936	\$ 250.00
April	7, 1936	\$ 200.00
April	13, 1936	\$ 225.00
May	28, 1936	\$ 50.00
June	8, 1936	\$ 100.00
Sept.	21, 1936	\$ 500.00
Sept.	28, 1936	\$ 250.00

## (Testimony of Ralph T. Montag.)

Oct.	2, 1936	\$ 250.00
Oct.	9, 1936	\$ 500.00
Nov.	3, 1936	\$ 500.00
Oct.	22, 1936	\$ 150.00
March	20, 1941	\$ 100.00
Aug.	8, 1941	\$ 500.00
Aug.	22, 1941	\$1,500.00

In response to inquiry regarding Government's Exhibit 15, "Suetter Placer Mines Trust Agreement" the witness testified that he had not participated in the business arrangements in drawing up the deed of trust; that the mining claims embraced thereby were the same mining claims upon which he held a mortgage, that mining operations had commenced upon the property in 1934.

The United States thereupon offered Government's Exhibit 17, a letter dated March 30, 1935, from the defendant, Suetter, to the witness, Montag, the material portions of which are as follows:

"Dear Friend: Got your letter and checks but very sorry you take the attitude you take. Stop to think we got too much in this to take that slant. You sure must be informed by some undercurrent of some kind. It would be adviseable for anyone to think little you haven't lost anything yet but got a lot to gain. Just the attitude you have taken on those two pay slips has convinced me that there is snake somewhere. In fact they are the only ones that work for the interest of the outfit in every respect. Waited for their money and would keep me informed on what was going on when out

(Testimony of Ralph T. Montag.)

for supplies. Blair Jacobs and those two that you refused to pay are the only four I have really had on job that I could put faith in so I am well convinced that something is rotten somewhere. Not having any clean up does not condemn the property or me either. I will be in about Tuesday."

To the admission of said exhibits 7 to 17, defendant, by his counsel, then and there objected, on the ground that the same was incompetent and on the [12] further grounds that the United States should be compelled to elect as to which count or counts in the indictment said evidence was directed.

The witness testified, referring to Government's Exhibit 9, that there had been no clean-up or any dividends from the operation in the 1934-35 season; that he had invested several thousand dollars as operating expense; that, according to a letter, Government's Exhibit 3, the mine was equipped and in operating condition on June 4, 1934, according to Montag's understanding with Suetter and that he could expect a clean-up; that there was never any clean-up on any of the mines as far as the witness Montag knew; and referring to Government's Exhibit 10, the witness testified that he had no understanding in regard to the phrase in the letter, "Please understand that the above agreements are in writing, duly signed and held by us, other than that contained in the letter Government's Exhibit 10; that he didn't know whom the agreements con-

(Testimony of Ralph T. Montag.)

cerned; that he assumed they were with the parties mentioned; that the witness had not any of the agreements; that the statements in said letter were statements of defendant Suetter as to what Montag's share would be.

Referring to Government's Exhibit 8, the witness testified that he presumed that the "E. H." referred to therein was a Mr. Ed Hogan, although he had never met the man.

Referring to Government's Exhibit 8, the witness testified that the checks were given to defendant Suetter in connection with the financing of the mining operations.

Referring to Government's Exhibit 18, the witness Montag testified that he had made no other deposits on Suetter's behalf, that he had paid out, on one or two occasions other money beside that represented by his checks and the mortgage given to the Grants Pass Bank for \$10,000; that those bills were for equipment paid for by Montag personally to the B. E. Davis Electric Company, and Steel Tank and Pipe Company.

To prove the amount so paid by the witness Montag, the United States offered Government's Exhibit 19, a group of correspondence and bills as follows:

Government's Exhibit 19, a group of miscellaneous bills [12] paid by the witness Montag to B. E. Davis Electric Company and other in the sum of \$5,798.92.

To the admission of said Exhibit 19, defendant,

(Testimony of Ralph T. Montag.)

through his counsel, then and there objected on the ground and for the reason that no foundation had been laid, that the evidence was not competent to prove the issues of the case at bar; that the evidence referred to a transaction prior to the crime charged in the indictment, which said objection was overruled and an exception allowed.

The witness further testified that he had never received any "Units" in the "Suetter Placer Mines."

On cross examination the witness testified that he was manager of the Montag Stove and Furnace Works; that he met the defendant Suetter when the latter was in the horse business in the Kenton district in Portland; that the witness Montag became interested with the defendant Suetter in mining properties in Mexico prior to the venture in the Josephine mines; that the defendant Suetter had communicated with the witness Montag constantly since 1933-34 up to the time of trial; that the dealings between the parties prior to the acquisition of the Josephine mines had not been objectionable to the witness Montag; that the defendant Suetter was not indebted to the witness Montag prior to the acquisition of the Josephine properties from any prior mining ventures; that he had made no personal investigation of the properties; that the witness Montag had advanced to the defendant Suetter \$5,000.00 to finance the properties based wholly on the information contained in letters sent by the defendant Suetter to the witness Montag; (Govern-

(Testimony of Ralph T. Montag.)

ment's Exhibits 1, 2) and his confidence in the defendant.

The witness Montag further testified that his understanding with the defendant Suetter was that Montag was to receive 50% of anything made off the properties; that he was not interested in selling the properties but was only interested in the operation of the mines; that he was never consulted about a sale of the properties.

In response to certain questions, the witness Montag testifies as follows:

Mr. Prendergast: Q. "Well, isn't it a fact, Mr. Montag, that prior to Phillip Suetter going East on this particular purpose [13] that you conferred with Robert Strong in regard to an option on these properties?"

A. "I did not, no."

Q. "You never did?"

A. "I met with Mr. Strong after he had made an investigation."

Q. "After Robert Strong and his associates had made an investigation of the properties you met with Mr. Strong; is that correct?"

A. "I think Mr. Suetter and I met with Mr. Strong."

Q. "Yes, and why did you meet with Mr. Strong?"

A. "Mr. Strong was interested in, had some clients or something in New York, as I understand it, who were interested in buying the property."

(Testimony of Ralph T. Montag.)

Q. "So you and Mr. Suetter went up and talked to him about buying the property?"

A. "No, I don't think I did."

Q. "What did you talk to him about?"

A. "I listened to his report."

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Q. "And isn't it a fact at that time that the engineer reported that Phillip Suetter owned the property; that, however, he was associated with Mr. Ralph Montag, who had an interest in the property?"

A. "I guess. I don't remember all of the report, Mr. Prendergast."

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Q. "You testified you were only interested in the operation of the properties, but your memory has served you better now and you have testified that you did go and see Robert Strong and associates in regard to the sale of the property?" A. "Yes." [14]

Q. "And the report made by Robert Strong and associates engineers on this property on behalf of these clients was read to you at that time?" A. "I think it was, yes."

Q. "And that was in regard to a sale of the property; that transaction with Robert Strong; isn't that correct? That is what you were up at Strong's office for?"

A. "Well, I don't know an actual sale was in progress."

(Testimony of Ralph T. Montag.)

Q. "Well, a contemplated sale?"

A. "Yes, perhaps a contemplated sale."

Q. "What was your understanding, if the property was sold, as to your participation?"

A. "Well, I don't know that there was any understanding. My feeling was—"

Q. "Well, what was your feeling then?"

A. "—that if the property was sold, and I consented and agreed to receiving half of the profits, or whatever they were—"

Q. "Half of whatever Suetter got for the sale of the property; is that correct?"

A. "Yes, I think so."

The witness Montag further testified that the properties were carried in the name of the defendant Suetter; that he did not consider himself a partner; that he was a "grubstaker"; that he paid the bills and advanced money in the operation of the mine; that he did not want the properties carried in his, Montag's name; and that he was to get half of what Suetter made from the properties.

The witness Montag also testified that the defendant Suetter informed him that he was going East to raise some money because Montag would not put up any more money; that the witness had advanced certain expense money to the defendant for the trip East; that the defendant Suetter informed the witness Montag that [15] he had interested some Catholic Clergyman in buying an interest in the property; that Montag did not object to such transaction.

(Testimony of Ralph T. Montag.)

In answer to certain questions propounded by the Court the witness testified as follows:

The Court: Q. "Now you knew he was negotiating with people to give them an interest in exchange for advancing finances which you did not care to advance any longer, or you were not in a position to?" A. "Yes."

The Court: "Is that correct?"

A. "Right."

The Court: "You knew that the money he was to secure from these people was to go into the further development of the mine and in acquisition of machinery, did you not?"

A. "I knew it from the letters, yes."

The Court: "You knew from the letters?"

A. "Yes."

The Court: "But when you say you didn't want anything to do with it you mean that you did not want to disclose your interest in the venture, you wanted him to do it in his own name so long as you were kept out of it; was that the idea?"

A. "No, it was more than that, your Honor."

The Court: "What was it?"

A. "The whole thing was I didn't want to be connected up with any deal that wasn't honorable and upright."

The Court: "You didn't know the details of the deal. All right. But leaving aside any

(Testimony of Ralph T. Montag.)

question of the honesty of the deal, you have made no objection to his negotiating with people in the East for the advance of money to operate the property, in which you claimed an interest; is that correct?"'

A. "No, I think that is correct."

In continuing his testimony on cross-examination the witness Montag stated that he did not know who Ed Hogan was and upon reference by counsel for defendant to Government's Exhibit 12, Montag testified that the "B" referred to therein was the "Bishop"; that "E. H." referred to therein was Ed Hogan; and referring to Government's Exhibit 13, the witness Montag testified that he had sent the same to the defendant Suetter to the Stevens Hotel in Chicago; that the letter was [16] sent at or near the time that the defendant Suetter was to sell to the Bishop an interest in the property that the witness Montag claimed a one-half interest in; that the witness Montag knew of the negotiations being carried on by the defendant Suetter for the sale of interests in the mine and that he was at all times kept informed.

The witness identified Defendant's Exhibit 20 as a folio prepared by Robert Strong and associates relating to the properties embraced in the Josephine Mines upon which he held a mortgage; that he was the Mr. Ralph Montag referred to in said Exhibit 20.

Referring to Government's Exhibit 16, the witness Montag testified, on cross-examination, that

(Testimony of Ralph T. Montag.)

the checks therein contained had been advanced by him to the defendant Suetter for the Josephine properties but that certain of the checks; dated 1941, in the amount of \$2100.00, were for an altogether different mining venture at Fort Jones, California; that he was still associated with Suetter in mining ventures; that he had advanced money to the defendant Suetter in 1942; that the witness Montag was to receive one-half of whatever was made on the properties.

The witness further testified that he had received no return from a "clean-up" from the Josephine Mines; that he did not know that some values had been recovered by the defendant Suetter that the money so obtained had been used to pay the men employed.

At the close of the examination the following questions were propounded by the Court:

The Court; "Mr. Montag, as I gather from your testimony, you at all times knew what was going on?"

A. "Yes—No, I won't say I knew all."

The Court: "I mean, you knew most—"

A. "Yes."

The Court: "of what was going on, and by your letters you showed—by the letters you received from Mr. Suetter and some of the replies—he was trying to account to you for the progress of the, I call it ex- [17] ploitation of the mine—the working of the mine?"

(Testimony of Ralph T. Montag.)

A. "Yes."

The Court: "And while you were furnishing the money he tried to give you an account every week or every so often, as to where the money went to; is that correct?"

A. "No, not quite that way—he would tell me at times."

The Court: "He would tell you at times?"

A. "Yes."

The Court: "Because you were always kicking that you didn't want to put in any more money; isn't that the idea?" A. "Yes."

The Court: "Then after he went East you have already stated that you knew he went there to raise money?" A. "Yes."

The Court: "In other words, you are not complaining of anything, that Mr. Suetter in any way misrepresented anything to you in order to get your money, are you?"

A. "No, I don't claim that."

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The witness Ralph T. Montag was thereupon excused and the United States as it next witness called

MR. C. R. DEAN,

who testified on direct examination that he was in business with the Electric Steel Foundry in Portland, Oregon; That in 1938 he had sold to the defendant, Phillip Suetter, at the St. John Boscoe

(Testimony of C. R. Dean.)

Mine, a gold washing machine for \$34,366.50; that the machine was paid for in cash by checks on the Suetter Placer Mines during the course of construction; that the work was subcontracted by Electric Steel Foundry to A. Young & Sons Iron Works.

On cross-examination the witness Dean testified that the actual proposal was accepted on March 26, 1938; that the transaction for purchase of the machine was carried on with the defendant Suetter in Chicago, through A. W. Hopper, a representative of the Electric Steel Foundry; That the first proposal was made by letter dated March 24, 1938, and addressed to the Suetter Placer Mines, Chicago, Stevens Hotel; that said proposal letter was sent in line with negotiations theretofore carried on [18] by A. W. Hopper who had been sent to Chicago by the Electric Steel Foundry.

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The witness Dean was thereupon excused and the United States then called as their next witness,

MR. WILLIAM J. YOUNG,

who testified, on direct examination, that he was a members of the A. Young & Sons Iron Works; that they had constructed a gold washing machine for the Electric Steel Foundry in 1938; that the defendant Suetter had picked up the equipment from the Young Company plant; that the A. Young & Sons Iron Works added equipment in the sum of \$5,750.00 above the original contract that said equip-

(Testimony of William J. Young.)

ment was paid for by checks for \$2,392.50 on the Suetter Placer Mines drawn on the St. John Boscoe Mine or by cash, both signed by Phillip Suetter; that three items of added equipment in the sums of \$198.00; \$270.38; and \$404.65 were paid for by checks from the Suetter Placer Mines; that the last two checks given in payment were personal checks of the defendant Suetter.

On cross-examination the witness, William J. Young, testified that he had knowledge that the equipment ordered was to go to the French Hill Mine in Del Norte County, California; that he was on the premises while the machine was being assembled.

The witness identified Defendant Exhibit 22, a photograph, as a picture of the equipment referred to; that as far as the witness knew the cost of the machine was \$39,750.00, but that some other equipment had been added; that this was the usual type of mining machinery used in the vicinity; that it was substantial equipment.

On redirect examination the witness, William J. Young, testified that there were no "jigs" or amalgamator on the machine at the time it was delivered; that the sum of \$12,000.00 was the reasonable price for such extra equipment; that the total price of the gold washer plus the jigs and the amalgamator would be \$51,750.00.

'The United States thereupon produced

MR. EDWARD R. BACON

as a witness on behalf of the United States who testified that he was a dealer in construction and mining machinery; that he was located in San Francisco, California; that he purchased the "Gold Mining Machine" constructed by the Young Iron Works, from the defendant, Phillip Suetter, who represented himself as sole and exclusive owner and signed the Bill of Sale, on the Fourth day of April, 1939, for the sum of \$22,500.00. [19]

Upon the basis of testimony given by Mr. Edward R. Bacon as a witness on behalf of the United States, there was admitted in evidence Government's Exhibit #23, an affidavit executed by Phillip Suetter in connection with the sale of the gold-washing machine to Edward R. Bacon and Company, referred to on page 19 of the Bill of Exceptions. In this affidavit, which was sworn to and signed by Suetter, Suetter stated that he was the sole and exclusive owner of the washing plant. The witness Bacon testified that the purchase price of \$22,500 was paid to Phillip Suetter in the following manner: (1) Cashier's check for \$20,000, payable to the order of Phillip Suetter, was purchased by Edward R. Bacon and Company at the Bank of America in San Francisco and was forwarded to Suetter (Government Exhibit #25), (2) Check for \$2,500, drawn by Edward R. Bacon and Company, payable to the order of Phillip Suetter. The cashier's check, bearing the endorsement of Phillip Suetter, was later identified by Government witness Campbell, As-

(Testimony of Edward R. Bacon.)

sistant Cashier for the Bank of America, and was admitted in evidence as Exhibit #25. The bill of sale covering the gold-washing plant was identified by the witness Bacon and admitted in evidence as Exhibit #24.

The endorsement on Exhibit #25 shows that the cashier's check for \$20,000 was cashed by Suetter at the United States National Bank, Medford Branch. [19A]

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The United States thereupon called

MR. NEIL R. ALLEN

as a witness on behalf of the United States who testified, on direct examination, that he met the defendant, Suetter, in 1934; that he was the attorney for the sellers in the purchase of the "George" mine; that the purchase price was \$8,000.00; that a discount of 20% had been allowed for cash making the actual purchase price \$5,400.00; that the transaction was completed on June 28, 1934.

The witness, Allen, further testified that he sold the "Baer Mine" to the defendant, Suetter, in 1938; that said mines were paid for by \$6,000.00 worth of "Diocesan" notes signed by Archbishop Francis J. Beckman; that the deeds to said property were drawn in blank at Suetter's request; that subsequently, at the request of attorney Roberts, attorney for Suetter, and attorney Reames, attorney for Archbishop Beckman, the name of Archbishop Beckman was inserted in the deeds.

## WILLIAM E. PHILLIPS

was then called as a witness on behalf of the United States and he testified that he was the "Sales Engineer" for the "Link Belt Company", the world's largest manufacturer of mining equipment; that he was an engineer of 35 years experience in building and designing elevating and mining machinery; that he met the defendant, Suetter, in Chicago in the latter part of 1935 or the early part of 1936 and interested him in the purchase of mining machinery from the Link Belt Company; that Suetter explained to Phillips his plan of operation of the properties and gave Phillips detailed information regarding the property at Phillips request; that the information so furnished by Suetter was very satisfactory to Phillips.

Phillips testified that he advised Suetter that he, Suetter, needed a certain type of dredge to properly work the property; that the price of such a dredge was approximately \$250,000.00; that Suetter stated that he was properly financed. [20]

Phillips further testified that he assumed that the defendant Suetter was the owner of the properties; that they had discussed the types of machinery for the property; that he acted solely as salesman and not as engineer.

Upon identification by the witness, Phillips, the United States offered in evidence Government's Exhibit 36, the material portions of which are as follows:

(Testimony of William E. Phillips.)

ARTICLE OF AGREEMENT  
for  
PLACER MINING

"Article of Agreement made the 25th day of November A. D. 1936 between the Suetter Placer Mines of Josephine County, Oregon, and W. E. Phillips of Oak Park, Illinois, witnessed as follows: Unit No. 55

The Suetter Placer Mines of Josephine County, Oregon, owning 333 acres in Township 38A, range 9 W. M., Josephine County, Oregon, in accordance with a survey made showing 333 acres more or less have agreed to divide same into 800 units 350 to 375 to be sold at \$1,000.00 per unit for the purpose of purchasing the necessary equipment, such as Link-Belt gold reclaimer, two Link-Belt K-48 draglines, one Link-Belt K-48 Shovel, tractor and bulldozer, Keyston drill, cleanup equipment, electric lighting plant, as well as other necessary and essential equipment for the purpose of placer mining the above mentioned property.

The Suetter placer mines agree that before any profits are participated in by them, each purchaser of a unit is to be paid back in full his initial investment, together with 6 percent interest on the investment for the length of time necessary, before this money shall be paid back in full out of the earnings of the operation.

It is further agreed that should the Suetter

(Testimony of William E. Phillips.)

Placer Mines deem it advisable to permit part or parts of this property to be operated by others on a royalty basis that each unit owner shall participate in the profits proportionately to the number of units owned and that they in turn thru this medium of operation shall be paid back in full their initial investment plus 6 percent interest thereon before the Suetter Placer Mines participate in profits.

It is further agreed that after the initial investment plus interest has been paid back to the purchasers of the above mentioned 350 or 375 units sold to acquire money to purchase the necessary equipment for this operation, all unit holders shall share and share alike in the profits earned for the balance of the life of this property.

It is further agreed that a unit holder may transfer or sell his unit at anytime he should so desire.

All checks for units shall be made payable to Mr. Phillip Suetter in witness whereof, the parties hereto and hereunto, inter-changeably set their hands and seals, the day of the year first above written. In the presence of Suetter Placer Mines;

Per PHILLIP SUETTER  
Rep R. E. GILMORE

This agreement to be subject to the approval and signature of Mr. Phillip Suetter. [21]

The United States also offered in evidence, after

(Testimony of William E. Phillips.)

identification by the witness Governments Exhibits 37, 38, and 39, identical with Government's Exhibit 36.

The United States further offered Government's Exhibit 40, a stock certificate as follows:

Suettter Placer Mines  
Josephine County, Oregon  
Picture of dredge

This certifies that William E. Philips is the beneficial owner of five (5) units of.....

Suettter Placer Mines  
transferrable on the books and records of Suettter Placer Mines by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed. The transfer or assignment of this Certification is subject to the terms and conditions contained in a certain Declaration of Trust known as Suettter Placer Mines Trust Agreement dated January 2nd, 1937.

Dated January 2, 1937.

PHILLIP SUETTER  
Trustee

Government's Exhibit 41, a copy of a 'Trust Agreement' identical with Government's Exhibit 15, and Government's Exhibit 42, identical with Exhibit 41.

To the admission of Government's Exhibits 36, 37, 38, 39, 40, and 42, the defendant, by his counsel, then and there objected, on the grounds and for the reason that the same were irrelevant, imma-

(Testimony of William E. Phillips.)

terial and incompetent and on the further grounds and for the further reason that the United States should be compelled to designate or elect as to which charge or charges in the indictment the said evidence was directed, whether to the counts charging violation on section 15, or section 18. The Court overruled said objection and allowed an exception.

Phillips testified that he had assays of the material from the property made to test the gold content; that he had an assay made without the defendant Suetter's knowledge (Defendant Exhibit 46); that he supplied the defendant with a photographic cut of a mining dredge, then in operation on another mine used by Suetter upon the heading of the trust "units;" that Suetter supplied a map with test holes [22] within two or three weeks after their first meeting and an analysis of the test holes; that Phillips advised Suetter as to the proper method of testing.

In regards to the photographic cut, Phillips testified as follows:

Q. Is that your practice in connection with your sales program, to furnish pictures of your machines? A. Yes, sir.

Q. For use on stock certificates?

A. Well, no sir, not on stock certificates.

Q. Was it put on this stock certificates with your permission? A. No, sir.

Q. Or your suggestion? A. No, sir.

On cross examination the witness, Phillips, qualified this testimony as follows:

(Testimony of William E. Phillips.)

Q. And I believe you testified that it was without your consent that he had this picture of the dredge put on this document?

A. It was not. I didn't say it was without my consent. I don't remember of him ever asking about that.

Q. But you were confronted with one on January 2, 1937, with a picture of a dredge on it? A. That is right.

Q. And you made no protest at that time?

A. No, that is true.

Q. It was perfectly all right with you if he did that? A. That is right.

Q. So that when you wrote to the Archbishop eleven days later you knew that Suetter had placed a picture of the contemplated dredge or a dredge of that type on these stock certificates?

A. That is true. That was fully understood —that he was to buy a dredge of that kind. [22-A]

Phillips testified that he became the owner of one "unit" in the "Suetter Placer Mines" on November 25, 1936; that the first agreement was in long-hand; that by January 2, 1937 the new agreements were ready and he received a certificate for 5 "Units"; that he gave a note for the first "Unit"; that said note was returned to him; that he had never parted with anything of value in exchange for any "Units" in the Suetter Placer Mines.

(Testimony of William E. Phillips.)

Phillips further testified that certain other employees of the Link-Belt Company had purchased "Units" in the Suetter Placer Mines; that upon their request all of the money so invested was returned to them by the defendant Suetter without question.

The witness Phillips also testified that he had not seen the property prior to January 2, 1937; that he had discussed the type of machinery with the defendant Suetter, and the cost thereof, necessary for the development of the property; that the material from the mine had been carefully analyzed under the direction of the witness; that assays had been made of the material under his direction; that tests had been made by the witness Phillips and the Link-Belt company to see if the material could be satisfactorily washed and processed.

Phillips testified further that he had been informed by the defendant that the property was being worked only in a small way; that there was some equipment on the property, a drag line, trommel screen, trucks and riffles, and separating machinery; that he, Phillips, visited the property in 1938, about August, and found there was plenty of water on the property; that the equipment was not in operation at that time except for the trucks and riffles; that he found no dragline or amalgamator; that the camp was good; that there were several trucks, a bulldozer and quite a few 6-inch pipes; that the equipment was substantially as out-

(Testimony of William E. Phillips.)

lined in the inventory the defendant, Suetter, had outlined to him. [23]

With reference to his visit to the Suetter Placer Mines, the witness, Phillips, testified as follows:

Q. Now did you ever see this Suetter placer mining property in Southern Oregon?

A. Yes, sir.

Q. About when did you see it?

A. Well, in '38.

Q. About what time of year?

A. In the summertime. I was out there about August, I think it was or September.

Q. Tell us about it.

A. Well, I went out to the property and Mr. Suetter wasn't there. There was a lady, two ladies, as a matter of fact, and seven or eight men were there, and I had lunch at the camp. It was a very nice camp. I found there was plenty of water but there was no equipment on the job. The trommel screen was—they had an old second hand machine or screen that was not fitted with any driving machinery and it couldn't revolve. There were several trucks, and a bulldozer, and quite a few pipe, quite a few feet of pipe, about 6-inch pipe.

Q. Was the machinery there in operation as described to you by Mr. Suetter?

A. No sir.

Q. When you procured this stock certificate?

A. Except that the riffles were there and

(Testimony of William E. Phillips.)

you could reclaim gold by shoveling the gravel into the riffles and letting it wash over. You wouldn't get satisfactory results.

Q. Nothing there except the riffles?

A. What is that?

Q. There was nothing there except the riffles in operation?

A. Well, of course the trucks were operating.

Q. The trucks?

A. Yes, sir, but you can't——

Q. But were there other machines there and not in operation? [23-A]

A. There was a screen there that was partially built. It was a second hand screen.

Q. Partially built?

A. (Witness nods his head.)

Q. A dragline?

A. No; I didn't see no dragline.

Q. Amalgamator?

A. No, sir, I didn't see no amalgamator.

Phillips further testified that nothing had been done to develop the property; that he had never received an accounting; that no proper testing had been done. He also testified that no one seemed to be in charge of the property when he was there.

The witness Phillips further testified as follows:

Mr. Dillard: Q. Did you attend any sales meetings and demonstrations conducted by Mr. Suetter? [23-B]

(Testimony of William E. Phillips.)

A. "I was asked to show a moving picture at the Stevens Hotel."

Q. "Did you do that?"

A. "Yes, sir."

Q. "Tell us about it, where you did it, when, and who was present."

A. "At the Stevens Hotel in Chicago. Father Beckman, and, Oh, I imagine there were eight or ten priests there, and I showed moving pictures and explained the operation of the machine."

Q. "What, if anything, was said there at this meeting by you? Did you make a talk or did you——"

A. "I explained the operation of the machine."

Q. "And was there anything said as to whether or not the machine was then in operation in Oregon?"

A. "No sir."

Q. "What was said about the machine? How did you explain your presence there? Why were you showing the moving pictures?"

A. "I was trying to—I was attempting to sell the machine."

The Court: "You designed it, didn't you?"

A. "Yes, sir. We were not discussing machinery that he had on hand on the property. We were promoting the sale of a new machine."

The Court: "You were not promoting the

(Testimony of William E. Phillips.)

sale of units; you were promoting the sale of your machine?" A. "That is right."

The further testimony of the witness, Phillips, was that he, at that time, informed those present that he property should be tested further to determine the exact type of machine necessary; that there were properties that his Company would refuse to build a machine for when the ground did not warrant it; That Archbishop Beckman was present at the meeting; that he, Phillips, took an order for a dragline from Suetter; that he had made no public recommendation of the property in order to assist in the sale of the "Units" in the Suetter Placer Mines. [24]

There was admitted into evidence, upon identification by the witness, William E. Phillips, Government's Exhibit 43, Letterhead Link-Belt Company, 300 West Pershing Road, Chicago, November 19, 1936, a letter which reads as follows:

"Mr. Phillip Suetter, Stevens Hotel, Chicago,  
Ill.

"Dear Mr. Suetter: In mining operations, as in other engineering fields, it occasionally happens that radical departures from standard practices to meet unusual conditions prove to be more effective than conventional methods.

"Our Company feels from experience that placer mining is probably one of the most legitimate types of business that anyone could enter or invest their money, provided a few com-

(Testimony of William E. Phillips.)

mon-sense essential rules are followed out. First, by purchasing a machine that is designed and built to suit conditions of the property on which the machine must operate. Second, knowing the gold values by proper testing. Third, installing equipment with capacity enough to show a profit based on the gold values and the nature of the material in the property. Fourth, determining definitely and positively the available supply of water to know whether it is adequate to operate on the scale continuously twelve months in the year that the property and machine be manned.

"There are only a few of the essential and important points, but provided they are known you have taken all of the speculation out of placer mining. Your tests will positively prove the values contained and a cross-section map can be made which will definitely give you exactly the amount of gold that can be reclaimed day in and day out. Tests are again important for the reason that it may be necessary to at times divert your operation as channels of creek and river beds are very irregular and they have changed in the course of time, necessitating your following the course of the channel of where the gold positively lies.

"Our Company is extremely anxious to furnish placer mining machinery, but we have refused on many occasions to do so after a careful study of the deposit we learned that there

(Testimony of William E. Phillips.)

are features there that will not permit a successful or profitable operation.

"We are proud to say that we have no placer mining machines that are not showing a very handsome profit to their owners. This we contribute entirely to the fact that we carefully take your test and make a thorough study and investigation before we are willing to serve you with a machine for this purpose. It has been the policy of our Company for many years past to never offer a machine for any service unless we are sure that it has good possibility of showing a profit when put into service.

"Getting back to your particular property, the Suetter Placer Mines, and taking the test that you have made showing the gold values contained therein, let us for arguments sake or an analysis of what can be done go into the figures of the possibilities. [25]

"The machine has a capacity of from 6 to 10 thousand yards per 20 hour day which is naturally dependent upon the depth and nature of the digging, but let us assume a capacity of 5 thousand cubic yards a day at values of \$1.30. \$1.30 multiplied by 5 thousand cubic yards would give you \$6,500.00 per day recovery, multiplied by 26 operating days per month, or \$196,000.00 per month, multiplied by 12 months per year or \$2,028,000.00 gold recovery per year.

(Testimony of William E. Phillips.)

"Based on 5 thousand yards per day multiplied by 26 operating days per month equals 150,000 cubic yards per month at an approximate operating expense of 12c per cubic yard, which would be very conservative, give you an operating expense of \$18,000.00 per month multiplied by 12 months equals \$216,000.00 per year or a net profit of \$1,812.00 per year.

"In order to be conservative, which is always a good policy when talking to a prospective customer or investor, let us base these figures on 65c per cubic yard, which is half of what your test proves you have, which gives you \$1,014.00 gold recoverable per year. Deduct from this your operating expenses of \$216,000.00, giving you a net profit of \$798,000.00 per year, or in other words, you will be able to pay back the unit holders their initial investment plus interest and have \$300,000.00 to be divided among your 800 unit holders.

"There is so much that could be said and can be said regarding this type of an installation and I assure you that have you any friends who would like to have me go into detail more with them or you regarding this unit, it would indeed be a pleasure to do so.

"I am personally very enthusiastic about your property and really believe it is one of the outstanding placer properties in the United States today. It is not my intention to paint this picture for you but I indeed am anxious to

(Testimony of William E. Phillips.)

be conservative and give you the facts as they actually exist.

"With kindest personal regards, I am,

"Yours very truly,

"LINK-BELT CO.,

W. E. PHILLIPS,

Engineer."

The witness Phillips testified in regards Government's Exhibit 43, that he wrote the same in his capacity as sales engineer; that it was based upon information supplied by the defendant, Suetter; that Suetter did not profess to be an engineer but that others had made the tests.

On cross examination, the witness, William E. Phillips, testified that he had been employed by the Link-Belt Company 20 years as sales manager; that he had a wide experience in the design and manufacture of mining equipment; that [26] he was familiar with mines and mining generally; that he had designed gold mining equipment prior to meeting the defendant, that he met the defendant; at the Link-Belt plant in Chicago in 1935 or 1936; that Suetter informed him that he wanted to purchase machinery and supplied Phillips with certain information about the properties; that the type of machine needed was discussed and concluded that a dredge, or gold washing machine, costing \$250,000.00 was needed; that Phillips contracted to sell Suetter a dragline costing \$27,000.00 to be used while the large dredge was being constructed.

(Testimony of William E. Phillips.)

The witness further testified on cross-examination as follows:

Mr. Prendergast:

Q. "What is the practice of the Link-Belt Company, through yourself as sales engineer, when a man comes in and orders a \$27,000.00 machine? Do you make an investigation of the property?" A. "Of the property?"

Q. "Yes, that he proposes to put it on?"

A. "We get information as to what the machine is to be used for."

Q. "Yes."

A. "The information is on the property. We don't propose to test the property but we are always assured that the property has been properly tested."

Q. "How are you assured; merely by the statement of the person interested in purchasing?" A. "By authentic tests?"

Q. "Authentic tests?" A. "Yes, sir."

Q. "In this particular case did you have any authentic tests made?"

A. "No, sir." [27]

Q. Why did you deviate from your normal practice in this case? A. We did not.

Q. You said—maybe I misunderstood you—you said you have authentic tests made?

A. Yes, sir.

Q. Is that correct?

(Testimony of William E. Phillips.)

A. I say authentic tests must be made. I didn't say we would have them made.

Q. Well, how did you determine whether they were authentic or not?

A. By the reputable engineers or exploration crews.

Q. You don't take the word of the man who proposes to buy the machinery?

A. Not entirely.

Q. All right. Now let's talk about Suetter. When Suetter came to you did he say he had \$27,000.00 cash to buy the dragline?

A. Mr. Suetter said he had the money, and gave us a cash deposit of \$5,000.00.

Phillips further testified that his equipment was not delivered to the defendant; that the Link Belt Company cancelled their contract with Suetter for the sale of the equipment; that no authentic tests were made of the property before the contract of sale was entered into; that layouts of the proposed gold dredge had been made; that Suetter had sent to the Link Belt Company from the Suetter Placer Mines one-half ton of gravel for the purpose of testing to see if gold could be recovered therefrom; that the witness tested the gravel and had the Robert W. Hunt Company, mining engineers, also test the samples; that the tests in both instances were very, very satisfactory; that Phillips had never had an assay report from the Hunt Laboratories nor requested one.

(Testimony of William E. Phillips.)

In reference to the cancellation by the Link Belt Company of it's contract with Suetter, Phillips testified as follows:

Q. You state that he represented to you that he had the cash to pay for it?

A. Yes; we wanted to get the machine out, which would take six or seven [28] weeks or about two months and he would pay \$5,000.00 deposit, and upon shipment of the machine he would pay cash for the balance.

Q. Was that if the company said that he could purchase this dragline on terms to be agreed upon; that meant the terms that you have just spoken of. That is correct?

A. Or satisfactory other arrangements. We sell draglines on a deferred payment plan.

Q. Now, did you make any investigation as to his ability to pay off this cash—this \$27,-000.00? A. Yes, sir.

Q. What did you find from your financial investigation?

A. That they asked not to accept the order.

Q. They asked not to accept the order. Who is they?

A. Our credit department.

Phillips testified that Suetter had described the property very satisfactorily at their first meeting; that Suetter did not have nor represent the gold content of the properties; that he did have a map of some test holes, made by some engineer, of the

(Testimony of William E. Phillips.)

property; that the tests made of the gravel showed a recovery of \$1.65 per cubic yard; that based on the figures contained on the test-hole map of \$1.30 per cubic yard he had written Government's exhibit 43, heretofore quoted.

The witness further testified that he had contemplated the purchase of units [28-A] in the Suetter Place Mines because he believed it a good investment from the information he had; that he first knew of the existence of the units in the latter part of 1936; that he had this information and referred to the units in his letter of November 19, 1936 (Exhibit 43); that he had made public statements about the value of the units; that he always was enthusiastic about the property; that he, Phillips, had made statements to Archbishop Beckman in regards the value of the mines.

There was also introduced into evidence Defendant's Exhibit 46, identified by the witness, which reads as follows:

“Link Belt Co., Chicago Plant, 300 W. Pershing Road, Chicago, January 14, 1937

“Archbishop Francis J. Beckman, Locust and Eleventh St., Dubuque, Iowa.

“My dear Archbishop: After having talked with Mr. Suetter this morning who told me that he had a telephone message from you within the last day or so, advising that you would undoubtedly be able to see him shortly, I thought possibly you might be interested in knowing

(Testimony of William E. Phillips.)

what progress is being made with reference to the equipment for his placer mining operation.

"Since talking with you in the Stephens Hotel several weeks ago, and I believe while there, I requested that Mr. Suetter have some of the material from his property sent us, to verify and confirm exactly what type of equipment would be necessary to extract the gold. The writer decided that while Mr. Suetter had no idea, I was going to do this to make a positive extraction of the gold to see how much values were contained therein per cubic yard and it gives me great pleasure to inform you that we were able to reclaim values amounting to \$68.00 per ton. To make another check of what we had done, we sent part of this material to the Robert W. Hunt laboratories and they also verified, and as a matter of fact were able to reclaim a little more values than we were. This however may be due to the fact that the material we sent them possibly could have been from the bottom of the sacks or boxes and as we all know, gold being heavier in weight than sand or gravel, the gold would settle to the bottom, but from all the tests in the entire quantity, taking an average, the values run in the neighborhood of \$68.00 per cubic yard.

"This however is really amazing and I do not want to mislead you in anyway. I do not think however that the values will run that

(Testimony of William E. Phillips.)

high throughout the entire property but it bears out what Mr. Suetter had told us right along. He has not tried to exaggerate in any way, shape or form, but has been very conservative in all of [29] his estimates as to the values contained in this property.

"With this information as well as much other Mr. Suetter has given us, it was decided that prior to the building and furnishing of the large machine that (a) dragline could be sent out in advance to operate in connection with some trommel screening equipment he has already and by high grading, as well as prepare the side for the acceptance of the larger unit, it would work out to the advantage of all and consequently he has placed with us an order for the dragline wherein we expect to ship on about January 20th.

"In view of the facts that these tests we made proved to contain the values they did, many of the boys in our plant have become interested and have purchased from Mr. Suetter quite a few units and many more are contemplating doing so in the very near future. While we come in contact with placer properties very often, I do not hesitate to say that this particular piece in my opinion is as good if not better than anything I know at the present time, and believe that you will also find it the same, should you be further in-

(Testimony of William E. Phillips.)

terested in going along with them in this contemplated project.

"I am merely writing this letter to advise you of the progress we have made, what is actually being done and should you want any further information of facts we are able to obtain, or have received in connection with the Suetter Placer Mines, it would be a pleasure to forward to you immediately, any such information we may have, upon request.

"With kindest personal regards, we are

"Yours very truly, Link Belt Company,

W. E. PHILLIPS,

Engineer."

In explanation of this letter the witness testified that Suetter knew about the tests; that he did not know for what purpose the gravel had been sent from his property; that Suetter had not tried to exaggerate, in any way, the property; that the dragline was to be used preliminary to the \$250,000.00 gold dredge; that the reason the Link Belt employees were interested in purchasing units were because of the tests made by Link Belt Company and the witness, Phillips, not by Suetter; that there was no agreement between Suetter and Phillips that Phillips should receive any commission for interesting the employees of Link Belt Company in the purchase of units; that Phillips knew that the units were being offered, but not the identity of the particular persons to whom they were be-

(Testimony of William E. Phillips.)

ing offered; that the cut of the picture of a Link-Belt dredge featured on the unit certificates was furnished by Phillips to the [30] defendant, Suetter, on the occasion of their first meeting for that purpose; that prior to that time Suetter had no units or stocks certificates and had offered none to Phillips; that Phillips knew that the trust unit certificates were printed in Chicago in January, 1937; that he had never protested the use of their dredge photograph on the trust unit certificates although he saw the same on January 2, 1937.

Counsel for the defendant, referring to Government's Exhibit 36, read same as follows:

“Articles of Agreement for Placer Mining”

“Articles of agreement made the 25th day of November, A. D., 1936, between the Suetter Placer Mines of Josephine County, Oregon and W. E. Phillips of Oak Park, Illinois.

“Witnessed as follows: Unit No. 52.

“The Suetter Placer Mines of Josephine County, Oregon, owning 333 acres in township 385; Range 9 W. M. Josephine County, Oregon in accordance with a survey made showing 333 acres more or less, have agreed to divide some into 800 units, 350 to 375 to be sold at \$1,000.00 per unit for the purpose of purchasing the necessary equipment, such as a Link Belt gold reclaimer, two Link Belt K-48 draglines, one Link Belt K-48 shovel, tractor and bulldozer, Keystone drill, cleanup equipment, electric lighting plant, as well as

(Testimony of William E. Phillips.)

other necessary and essential equipment for the purpose of placer mining the above mentioned property."

And in answer to questions propounded the witness testified that the first agreement delivered to the witness contemplated the purchase of machinery "such as" Link Belt equipment; that Suetter had already purchased a dragline from the witness; that when the units were drawn up Phillips was contemplating the sale of over \$280,000.00 worth of equipment to Suetter; that he did not check Suetter's financial condition; that he had written to Archbishop Beckman that a considerable part of the financing would be obtained from Link-Belt employees; that the witness, Phillips, was satisfied the mines were a good proposition; that even after being informed by the credit manager of the Link Belt Company of the cancellation of Suetter's contract the employees and Phillips were still interested in the property as investors.

Phillips further testified on cross-examination that he visited the property [31] in 1938; that he was satisfied with what he saw of the property; that his opinion in *regard their* high value had not changed.

The witness further testified as follows:

Mr. Prendergast,

Q. You testified Suetter said he would like you to have four more units because they were a good investment?

(Testimony of William E. Phillips.)

A. That is right.

Q. As a matter of fact, you told Suetter they were a good investment, didn't you?

A. I believed that.

The further testimony of Phillips on cross examination was that Suetter had informed him of the equipment on the property; that upon his visit the only equipment *the* could be used were the riffles; that there was plenty of water; that what was needed was proper machinery; that Phillips was enthusiastic about the property and that he was presently and is presently of the same mind regarding the value of the property; that he went to Suetter in 1938 in Chicago and asked that the money invested by the Link Belt employees be returned because the property had not been developed; that he had "interests" in the property in spite of the fact that he had never paid anything for the five units that he had received; that he, Phillips, had refused to return the Units to Suetter's attorney in spite of demand made; that Suetter had never deceived nor misrepresented anything to the witness.

On re-direct examination Phillips again testified that there was no machinery on the property with which gold could be mined; that after he returned from his trip to Oregon he met Suetter at the Stevens Hotel and requested the return of the money invested by the Link Belt employees as well as the note he had personally given to Suetter. Regarding this, Phillips testified as follows:

(Testimony of William E. Phillips.)

Q. How did it happen you regained possession of your promissory note to Suetter?

A. I met Mr. Suetter in the Stevens Hotel and told him that he hadn't started work up there, no machinery was on the job, and that I wanted him to return the money to the boys who had invested.

Q. Did he return it at that time? [32]

A. Yes, sir, without any argument.

Q. Was that before or after you had come out here to Oregon and had been down to the mine? A. That was before.

Q. You got your money before you went down to the mine?

A. No, no; that was after I came to Oregon you mean?

Q. Yes.

A. Yes; that was after I came.

The witness Phillips further testified that after the Stevens Hotel meeting, Suetter told Phillips that the latter should not have brought up the question of testing the property; that he had already had the property tested; that Phillips replied that the testing was not satisfactory.

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The United States thereupon called

MARJORIE J. MONEY

who testified, on direct examination, that she was a Notary Public for Oregon; that she was a quali-

(Testimony of Marjorie J. Money.)

fied legal stenographer; that she had taken the deposition of the defendant, Phillip Suetter, on January 3, 1941, in Portland, Oregon, in connection with the case of Rhode v. Suetter, a civil case in the United States District Court for the District of Oregon.

After identification by the witness, the United States offered Government's Exhibit 48, a transcript of the deposition of Phillip Suetter, the material [32A] portions of which are as follows:

Mr. Hickson, Q. "What I am trying to get at, Mr. Suetter, is who made the tests that were made?"

A. "Well, I hired people there to put down holes. I had Bob Strong come down. He put down eight holes; he seemed satisfied but we couldn't make a deal."

Q. "When you say 'put down holes' what kind of test holes were these?"

A. They were 4½ by 6."

Q. "Then you just dug holes down to bedrock?" A. "Yes."

\* \* \* \* \*

Q. "How many of these test pits were put down by you and these parties you mention?"

A. "There was probably fourteen or fifteen."

Q. "And were those spotted about on the 320 acres?"

A. "Well, yes, they were all on this property."

(Testimony of Marjorie J. Money.)

Q. "Was that all the testing that was done?"

A. "Well, we worked there and took out some gold, and the solution—"

Q. "What was the average per yard recovery from the tests?"

A. "Well, on the tests they run up as high as \$1.50 and one down as low as five cents. You can go over it anywhere and you won't get a blank on the place, hardly."

Q. "What I asked you was, what is the average?" A. "I don't know."

Q. "After you made these tests and sunk the pits, did you prepare a log?"

A. "No."

Q. "You just kept the record in your head?"

A. "No, I kept it in my head, and I knew the gold was there, [33] that was all."

Q. "Were those tests made before you purchased the property from Judge Norton?"

A. "No."

Q. "They were made afterwards?"

A. "Afterwards."

\* \* \* \* \*

Q. "Up until the time of the execution of the Trust Agreement, did you ever have an engineer examine the property and report on it for you?"

A. "Well, I have had several engineers, plain practical engineers. I got one who made

(Testimony of Marjorie J. Money.)

a report on it, and I have had others. I had George Norton, and I know it was the truth, there have been spots in there that have taken out lots of money."

Q. "Now, what mining engineers ever tested the property and made a report for you concerning the values?"

A. "Well, a man by the name of Stewart claimed he was an engineer. I don't know where he came from but he *hade* a test of the property. And there was a man by the name of Hamilton. There were some California engineers up there to take the property, but I already had it—lived up there and put up some camp."

Q. "Have you employed these men as engineers?"

A. "No, I didn't employ them at all; they came up to get the property, wasn't under my employ at all."

Q. "As I understand then, you never did employ engineers to sample and test the property?" A. "No."

Q. "What was your purpose, Mr. Suetter, in the execution of [34] of the Suetter Placer Mines Trust Agreement?"

A. "Well, to get money to build roads. I had to build roads all the way from the highway to the mine. To build roads and buildings, and I wanted to get equipment."

(Testimony of Marjorie J. Money.)

Q. "You wanted to get equipment and money with which to finance the operation; is that correct?" A. "Yes."

On cross-examination the witness, Marjorie J. Money, testified that she was employed, at the time of the taking of the above deposition, by Mr. John Hickson, attorney for the plaintiff, P. P. Rhode; that she had no personal knowledge as to what property was referred to; that the case of Rhode V. Suetter was settled.

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The United States then called

**FATHER STEPHEN A. BUBACZ**

who testified that he was a Catholic Priest; that he resided in Chicago, Illinois; that he had advanced certain money to one Ed Hogan who had represented himself as owner of the Josephine Mines; that Father Bubacz had met the defendant, Suetter, some months after he had parted with funds to Hogan; that Suetter informed him that Hogan was not the owner of the properties; that the "Units" were given to Bubacz by Suetter for the money advanced to Hogan.

The testimony of the witness, Father Bubacz, was that the defendant, Suetter, had given the witness seven "Unit Certificates" in the Suetter Placer Mines; that Father Bubacz had never parted with anything of value to the defendant, Suetter, in exchange for the "Unit Certificates"; that the

(Testimony of Father Stephen A. Bubacz.)

defendant, Suetter, had never made any representations of any kind regarding the property, its value or potential value, to the witness in any attempt to sell any "units" to the witness, Father Bubacz.

The United States offered in evidence, upon identification by the witness, Government's Exhibits 49, 50 and 51, all being "Units" in the Suetter Placer Mines held by the witness, Father Bubacz, and Government's Exhibit 52, a copy of the Trust Agreement, the latter being identical with Government's Exhibit 15, heretofore quoted.

[35]

The witness, Father Bubacz, further testified that he had arranged a meeting with Bishop Paul P. Rhode for the defendant, Suetter; that Archbishop Beckman and the defendant had met in Chicago at Father Bubacz's home.

The witness also identified Government's Exhibit 53, a telegram dated September 29, 1940, being the same as contained in Count 5 of the indictment and testified concerning the same that after settlement of the lawsuit as between Archbishop Beckman and the defendant, Suetter, Beckman had placed the affair in the hands of a committee and he, Bubacz, was part of said committee and that said telegram referred to the terms of settlement as between Archbishop Beckman and the defendant, Suetter, and not to any transaction in regards the Suetter Placer Mines.

(Testimony of Father Stephen A. Bubacz.)

The witness also testified that he had discussed the properties with William Phillips of the Link-Belt Company, that he knew of the results of the tests made by Phillips and the Link-Belt Company, that Father Bubacz had discussed the properties and their values with Archbishop Beckman; that he had called Archbishop Beckman to arrange a meeting with Suetter; that Suetter met the Archbishop Beckman in Bubacz's residence in Chicago; that in the discussion of the mine values the representations of Phillips, after he had inspected the property, were discussed.

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### BISHOP PAUL P. RHODE

was thereupon called by the United States and he testified that he met the defendant, Suetter, at the Bishop's residence in Green Bay, Wisconsin, about the middle of March, 1937; that he had previously met Ed Hogan; that the defendant, Suetter, at that time, presented to the Bishop his desires for development of the mines; that on the occasion of the first meeting with the defendant, Suetter, Bishop Rhode purchased "units" in the venture.

In the course of the direct examination the United States offered in evidence, after identification by the witness, Bishop Rhode, Government's Exhibit 57, a letter dated December 11, 1937, ad-

(Testimony of Bishop Paul P. Rhode.)

dressed to the witness and signed by the defendant,  
Suetter, as follows:

“The Stevens, Chicago”

December 11, 1937 [36]

“Most Rev. Paul P. Rhode

Green Bay, Wisconsin

Dear Bishop:—Your letter received. I note all and don't let anything worry about check. I will not put check through only satisfactory to your excellency and will keep you informed. Dropping of stock market has delayed me some also. Where people could not meet their obligations they would have liked but those things happen.

“We can't govern them but everything is going fine at the property. Had little delay about getting in fuel oil but that is all overcome now so I expect they will be in operation by the time I get home or before move. I see the condition of employment and business in general more anxious. I am getting to get started on No. 2 outfit is on account one outfit makes money two will make more.

“I will close.

Sincerely yours,

PHILLIP SUETTER,

Kerby, Oregon”

The defendant, by his counsel, objected to the receiving of said letter into evidence unless the United States elected as to what count or charge the evidence was directed. Counsel for the United

(Testimony of Bishop Paul P. Rhode.)

States stated that the letter was offered in proof of a "general scheme." The Court overruled the objection, to which ruling counsel for the defendant then and there excepted.

The United States also offered, after identification by the witness, Bishop Rhode, Government's Exhibits 58, 59, 60, 61, and 62, the same being identical in form to Government's Exhibit 40, heretofore quoted, and being "Units" in the Suetter Placer Mines running in favor of Bishop Paul P. Rhode.

There was also offered and received in evidence, after identification by the witness, Govenrment's Exhibit 63, papers with envelope attached, of which the witness testified that he had received the same through the mail from the defendant, Suetter, on or about November 4, 1939, and that said envelope contained Units Numbers 27 and 28.

The witness also identified Government's Exhibit 64, a group of cancelled checks, from the witness, Bishop Rhode, to the defendant, Phillip Suetter, as [37] follows:

May	3, 1937.....	\$2,500.00
March	16, 1937.....	\$5,000.00
April	21, 1937.....	\$2,500.00
June	1, 1937.....	\$2,500.00
June	15, 1937.....	\$2,500.00
Nov.	30, 1937.....	\$5,000.00
Jan.	3, 1938.....	\$5,000.00
May	8, 1939.....	\$1,000.00
July	27, 1939.....	\$2,000.00

(Testimony of Bishop Paul P. Rhode.)

The United States also offered in evidence, after identification by the witness, Government's Exhibits 65 and 66, the same being copies of the Trust Agreement of the Suetter Placer Mines, signed by the defendant, Phillip Suetter, and being identical with Government's Exhibit 15, heretofore quoted.

Exhibit 67, a letter dated July 12, 1937, Phillip Suetter to Bishop Paul P. Rhode, which reads as follows:

“Dubuque, Iowa  
July 12, 1937

“Bishop Paul P. Rhode,  
Green Bay, Wisconsin.

Dear Bishop:

“Wish to inform you nothing to worry about. Roy Gilmore tried to pull a dishonest stunt. I checked him out and he got nasty. After investigation he pulled for himself six months to a year in prison. The dragline is on the grounds, truck and drill will be started this week.

“This man has cost me a delay of four months, they wanted me to prosecute him, I refused as I told them I'd rather say a prayer for him that God may guide him and his companions.

Yours very truly,  
PHILLIP SUETTER”

(Testimony of Bishop Paul P. Rhode.)

was offered in evidence by the United States. The defendant, by his counsel, objected to the receiving of said letter in evidence unless there was an election by the United States as to which counts, or charges, in the indictment said letter was directed. Counsel for the United States stated that it was offered as proof of a "general scheme." The Court overruled the objection, to which ruling counsel for the defendant then and there excepted.

Bishop Rhode testified, on direct examination, that he had invested [38] \$30,000.00 for 30 units in the mines, that he had relied upon the following statements of the defendant as to their value and the ownership:

"Q. Now will you tell me, Bishop, will you remember as much as you can of the conversation between yourself and Mr. Suetter when you first made a purchase of one of those certificates.

A. Mr. Suetter, on taking a seat in the room, as well as Mr. Roy Gilmore, opened up the conversation by telling me that they had a specially fine, a specially fine project of placer mining in the County of Josephine, I believe, in Oregon, and that they had come to interest me in the matter and to find out whether I would not become a purchaser of shares or units in the same, and as the basis of this they represented to me an agreement of trust as between Mr. Suetter, the owner, and the pros-

(Testimony of Bishop Paul P. Rhode.)

pactive purchasers. I had some knowledge of this agreement of trust, for I found a copy of that on an occasion of a visit at the home of the Reverend Stephen Bubacz. Nevertheless, I read this agreement over once more, article for article, and gave it some thought, and came to the conclusion that it was a document in all respects covering the situation and satisfactory. This led to a conversation as regards the merits of the property itself, and on that visit, and on subsequent visits, I was told of the merits of this territory or land that was covered by the Agreement of Trust; that the gold values there in the sand and gravel were such that for years past it repaid the individuals who did some gold panning there but that nothing more was done excepting to skim the surface, and that with capital and a purchase of machinery, and with work at a depth, considerable recovery could be had. Also it was said that in the past there was a lack of water to operate any placer mining proposition but that Mr. Suetter had acquired water rights amply sufficient to carry on operations and that it was only a question of the purchase of machinery to make this a paying proposition. More than that, he stated that miners and experts in mining had been consulted and that they agreed that there were value there that had not as yet been touched. I also was told that twenty holes were sunk

(Testimony of Bishop Paul P. Rhode.)

or drilled in various parts of the property and that the showing confirmed the findings or the [38-A] opinion of the engineers or the experts in mining, and other remarks and statements of the same kind had been made—were made.

To begin with, I asked Mr. Suetter as to whether he had a clear and legal title to the property, to which he replied that he had. And as to the value, why he said that there was no doubt at all that on the basis of the findings in those holes the recovery would go into millions; I think he mentioned *wether* twenty or fifty million, something like that, although I wouldn't be sure.

Q. I didn't quite understand that last, Bishop Rhode. He mentioned what?

A. He mentioned that from twenty to fifty million could be recovered in time, if I am not in error, and similar remarks of that kind, proving that he knew what he was doing and that what he was proposing and offering was a property and an opportunity that was rare, because placer mining, after all, is the cheapest form, the most economic form of operating. That, in short, was more or less what was stated to me during the first and subsequent visits that I received from Mr. Suetter.

Q. Did you have *nay* information from Mr. Suetter regarding the existence of a one-half interest in the profits of these mining opera-

(Testimony of Bishop Paul P. Rhode.)

tions in favor of Ralph Montag of Portland, Oregon?

A. I never heard the name of Montag until the other day here in court.

Q. Did you have any information regarding the existence of a mortgage for the full value of the purchase price of the properties?

A. I did not.

Q. In favor of Ralph Montag?

A. I did not. On the contrary, the remarks that Mr. Suetter made led me to believe that he, in his own *mane*, was the owner of the property.

Q. Now as I understand it, your purchase of these several units you have told us about took place over a period of time beginning probably early in 1937? A. Yes.

Q. And ending in 1939; is that correct, Bishop?

A. If I am not mistaken, that is correct."

[38-B]

He further testified that he had commenced a civil action against the defendant and that said civil action had been withdrawn by the plaintiff, Rhode, and the defendant, Suetter, had been released from all claims to Rhode.

There was admitted into evidence, after identification by the witness, Bishop Rhode, and without objection by the defendant, Government's Exhibit 68, an indictment letter contained in Count 6 of said

(Testimony of Bishop Paul P. Rhode.)

indictment; Government's Exhibit 69, an indictment letter contained in Count 7 of said indictment; Government's Exhibit 70, an indictment letter contained in Count 1 of said indictment; Government's Exhibit 71, an indictment letter contained in Count 2 of said indictment.

Bishop Rhode testified that he had received Exhibits 69, 70, and 71 from the defendant, Phillip Suetter, in the ordinary course of mail at or about the time indicated by the letters and that he had transmitted Exhibit 68 to the defendant, Phillip Suetter, through the ordinary mail at or about the time indicated by said letter.

On cross-examination, the witness, Rhode, testified as follows:

Q. "Bishop Rhode, after that time, and before you met Phillip Suetter did you further discuss these properties with Father Bubacz?"

A. "On one occasion when paying him a visit, he showed me a copy of the agreement of trust and told me—asked me what I thought of it. I picked it up and read it and said 'It looks like a pretty fair document.' "

Q. "Am I correct, now, that was before you met Suetter."

A. "That was before I met Suetter, yes."

Q. "Bishop Rhode, may I refer you to—Mr. Bailiff, will you *had* the witness Government's Exhibit 66. Bishop Rhode, will you take in your hands and tell us whether or not this trust agreement displayed to you by Father

(Testimony of Bishop Paul P. Rhode.)

Bubacz [39] upon the occasion of your visit to Father Bubacz was the same in form as the document you now hold in your hand."

A. "It was all in the same form."

Q. "It was in the same form?"

A. "Yes."

Q. "And that was before you ever met Phillip Suetter?"

A. "Indeed."

Q. "Now, Bishop Rhode, at that time did Father Bubacz display to you the certificates which you eventually received, some of which were eventually received, such as Government's Exhibit 59, with a picture of a dredge on it?"

A. "I have no recollection of that. It seems not."

Q. "You are aware that in a form of a trust agreement, which you now hold in your hand——"

A. "Yes."

Q. "——that the paragraph that appears as the third paragraph under the description of the property, in other words, the first paragraph under the fold with the paper folded in half, in order to point out to you—Mr. Bailiff, will you assist Bishop Rhode in finding the paragraph."

The Witness: What words begin the paragraph?

Mr. Prendergast: "It is understood that for each one thousand dollars paid to the trustee,

(Testimony of Bishop Paul P. Rhode.)

by any person, firm or corporation, under the terms and conditions of the trust, the trustee will issue to said person, firm or corporation making said payment, a certificate of ownership for one individual unit in said trust, which certificate is to be signed by the trustee hereunder, and he [40] subject to the terms and conditions herein contained."

The witness: "What do you ask me in relation to this?"

Q. "I ask you to refer to that now."

A. "Yes."

Q. "And I ask you now if you recollect that in the trust agreement form as displayed to you by Father Bubacz before you ever met Phillip Suetter, if the same provision was contained in that agreement?"

A. "I have no reason to disbelieve that this article was in that copy which was submitted to me. I believe it was."

\* \* \* \* \*

Q. "Yes. Did you understand, Bishop Rhode, that anyone contracting upon that trust agreement, anyone joining in that trust agreement and paying money, would be issued certificates of ownership?"

A. "I understand the matter in this way: That under a trust agreement there is a trustee and there are beneficiaries. The trustee may be the owner or he may perhaps merely have control to some extent of the property in question."

(Testimony of Bishop Paul P. Rhode.)

Q. "Yes. Now then, recollecting the same period of time before you met Suetter and after you met Hogan, in any of the discussions with Father Bubacz did Father Bubacz at any time tell you, or inform you, that Archbishop Beckman might be or was interested in investing in this property?"

A. "He made mention of the fact that Archbishop Beckman may be interested in this undertaking."

Q. "And what did he say in that connection?"

A. "Well, it is difficult for me to try to recall his statements on that occasion. It was no formal review of [41] this document, nor a real discussion of the property involved. It was a casual conversation on the matter; that was all."

Q. "Well, was it your understanding that Archbishop Beckman contemplated making investments in this property?"

A. "Insofar as his name was mentioned in connection with it; that was all."

Q. "Yes. Now, did Father Bubacz discuss with you, prior to your meeting with Phillip Suetter, the possible machinery required to operate such a mine and the possible places where this machinery might be purchased?"

A. "No."

Q. "Did he say anything to you about the Link Belt Company of Chicago?"

(Testimony of Bishop Paul P. Rhode.)

A. "No, later on, some time after this was under way, he mentioned the fact that a certain Mr. Phillips had invested in the mine undertaking."

Q. "Now you say "he"; you mean Father Bubacz told you that Mr. Phillips had invested?"

A. "Yes."

Q. "Now, as a matter of fact, Bishop Rhode, Father Bubacz displayed to you a letter written by Mr. Phillips to Mr. Suetter concerning this property; isn't that true?"

A. "I don't recollect that fact."

Q. "Well, is it possible that it is true and you don't recollect it?"

A. "Well, that is a technical question, it seems to me. It may be possible and it may not be possible."

The Court: "Bishop, you are always metaphysical."

Witness: "Indeed; indeed, your Honor. It is not excluded."

Mr. Prendergast: Q. "Bishop, you are not denying that [42] Phillip Suetter—"

Mr. Prendergast: "Withdraw that.—"

Q. "You are not denying that you ever saw—"

Mr. Dillard: "If your Honor please, I object to him including the word "denying" in the question. They are arguing, attempting to argue with the witness like that."

(Testimony of Bishop Paul P. Rhode.)

The Court: "Well, I think you had better reframe the question."

Mr. Prendergast: "Did you ever at any time see any letters or statements from Mr. Phillips, of the Link Belt Company, addressed to Mr. Suetter, or Archbishop Beckman?"

A. "As far as I can remember, I never saw a letter from him."

Q. "Did you ever talk to Mr. Phillips?"

A. "Never. Oh, pardon me. I think he was introduced to me in the Court the first day. That was all."

Q. "You mean here in this Courtroom?"

A. "Yes, on the first day I arrived."

Q. "Were you present on the occasion of Mr. Phillips displaying motion pictures in Chicago at the Stevens Hotel?"

A. "I knew nothing about that."

Q. "Now, Bishop Rhode, before investing thirty thousand dollars in this property, did you make any independent investigation of the properties?"

A. "No, I made no independent and personal investigation."

Q. "Upon the occasion of your first meeting with Phillip Suetter what did he display to you in the way of reports upon the properties in Oregon, if anything?"

A. "What did he require of me?"

Q. "What did he display to you? Did he

(Testimony of Bishop Paul P. Rhode.)

display to you any reports or anything on these properties?" [43]

A. "No. Once on one occasion, one of his visits, he displayed a vial or a bottle of black gold dust, I believe."

Q. "A bottle of gold dust?"

A. "Yes."

Q. "And what did he tell you about the property?"

A. Well, no. As regards his bottle of gold dust he said it was the highest—it had the highest content of gold, I believe it was the most valuable form. There were some nuggets in there I think also. And as regards the property, as I have already stated, in the beginning he said that it was property that had been worked, on which surface workings had been done in part; that owing to lack of water and machinery all organized efforts had been discontinued, it seems, and still there was gold practically everywhere where you would throw a pickaxe, I believe, and that there was no question at all that with proper equipment considerable recovery could be obtained. He spoke in a general way."

Q. "Now, as I understand, Bishop—and may I repeat just a moment?"

A. "Yes."

Q. "The first time Hogan came to you, before you ever met Suetter—"

A. "Yes."

(Testimony of Bishop Paul P. Rhode.)

Q. "—and tried to interest you in the properties, and went so far as to offer to give you some of these properties, or units, you turned him down and said you were not interested?"

A. "That is true."

Q. "Approximately a year later, not more than two years later, when you met Phillip Suetter——"

A. "Yes."

Q. "And the first time you met him——"

[44]

A. "Yes."

Q. "—you offered to invest your money in these properties?"

A. "True."

Q. "Is that true?"

A. "Yes."

Q. "And did you invest \$30,000.00?"

A. "Not then but——"

Q. "No, but over a period of time?"

A. "Over a period of time, yes."

Q. "You were willing to, and did, the first time you met Suetter——"

A. "Yes."

Q. "Start your investment?"

A. "Yes."

Q. "And you testified that all he did was show you a bottle of gold and tell you——"

A. "No; pardon me."

Q. "—that it was the best——"

A. "Not on that occasion. I beg your pardon. One visit later on."

(Testimony of Bishop Paul P. Rhode.)

Q. "Upon what did you change your opinion of these properties?"

A. "On this: Because there was a difference, an essential difference, between the contract shown me by Mr. Hogan and the contract of which we have a copy here."

Q. "And what was the essential difference?"

A. "There was this: At first it was unsatisfactory, owing to the get-up—I did not memorize that, you know—while the second offering, with this trust agreement as a basis, appealed to me."

Q. "Were you interested in the documents or were you interested in the property?" [45]

A. "I was interested in what constituted the basis of any activity, or of any interest in the matter."

Q. "What was your primary interest in making the investment, in the gold properties or the trust agreement?"

A. "In the trust agreement as leading to a profitable and easy investment and a safe investment."

Q. "I believe your words were that, as far as the representations made to you by Mr. Suetter upon the occasion of the first visit, or some subsequent visit, they were, that with capital, and with machinery, and at a proper depth, that a considerable recovery could be had?"

A. "Yes."

(Testimony of Bishop Paul P. Rhode.)

Q. "In the past there had been a lack of water but that Suetter had acquired, or was acquiring, certain water rights, which would enable the mine to operate, with adequate machinery?"

A. "Yes."

Q. "And that fact experts agreed upon?"

A. "Yes."

Q. "Suetter represented that some twenty holes had been sunk in the property and that the showing made from the tests of these holes confirmed the findings of engineers; is that correct?"

A. "More or less. Of course, your wording and Mr. Suetter's wording is slightly different."

The Court: "Well, he is merely giving a summary of your testimony."

The Witness: "Yes."

The Court: "Bishop Rhode."

The Witness: "Very well."

The Court: "Those were the substance, such as title and the manner of handling, the substance of the things you testified to this morning?" [46]

The Witness: "Yes."

Mr. Prendergast: Q. "What happened to the trust certificates that you received from Phillip Suetter for the money you paid him, Bishop Rhode?"

A. "The certificate? In due time, when difficulties arose between Archbishop Beckman

(Testimony of Bishop Paul P. Rhode.)

and Mr. Suetter and the case evidently came to the notice of the Securities and Exchange Commission——”

Q. “Now, do you know that, as a matter of fact, that it had come to their notice at that time?”

A. “I don’t know, but here is what happened. I was visited in succession by two gentlemen who showed me credentials of their——”

The Court: “I think we had better not go into that because you cannot testify to what they told you, Bishop. Let’s read the question again. I think that merely calls for what became of the certificates, and you can state that, as what we lawyers call, an ultimate fact.”

The Witness: “An ultimate fact?”

The Court: “Without narration of how it came about.”

The Witness: “This certificate, at present recollection, went over to the representative of the Securities and Exchange Commission or the Federal Income Bureau. I cannot say to which one of the two it went but it went to one of them.”

The Court: “All right.”

Mr. Prendergast: “Possibly my question was confusing, Bishop. I should ask it this way: Are you still the owner of the units?”

A. “Yes.”

Q. “So, you are still the owner of units in the Suetter Placer Mine?”

(Testimony of Bishop Paul P. Rhode.)

A. "Yes."

Q. "Are you a stockholder, or do you have any interest in the [47] Hercules Mining Corporation?"

A. "No."

Q. "Did Monsignor O'Laughlin at any time ever give you any interest in the Hercules Mining Corporation?"

A. "I have never seen the gentleman."

Q. "Whether you have seen him or not, did you receive from Archbishop Beckman, Monsignor O'Laughlin, Charles Reames, or a man by the name of McCormick, any interest in the Hercules Mining Corporation?"

A. "No."

Q. "Do you know what the Hercules Mining Corporation is?"

A. "I know at present that it is supposed to be a new organization to work the Hercules Mine."

Q. "And the Hercules Mine was one of the mines that Phillip Suetter had put into the Suetter properties; is that correct?"

A. "The Hercules Mine, as far as I am concerned, came into being later on, after he began buying mines around there. I have never had any interest, either moral or financial, in any of those mines. I invested my funds in the Suetter Placer Mines solely, and refused to

(Testimony of Bishop Paul P. Rhode.)

have anything to do with the other discoveries of gold there in Oregon."

Q. "Isn't it a fact that Archbishop Beckman, in a settlement with Phillip Suetter and the taking over of these mines which were later put in the Hercules Mining Corporation, gave you an interest in the property?"

A. "Gave me—pardon me—gave me an interest in the——"

Q. "In the property——"

Mr. Dillard: "If your Honor please, I object to that."

The Court: "I will sustain the objection. It is immaterial. When they recover money subsequently it is not material. The law covers a scheme or device for defrauding. I thought you were going to [48] ask these questions to show possible interest or bias, something like that, but the mere fact that he may have received shares from others, or that he may have received money, is not material after the fraud is perpetrated."

Mr. Prendergast: "That is not what we were intending to prove, your Honor. That is not the intention of the questions. All of these letters set forth in the indictment are letters written after June, 1939."

The Cour: "I understand that."

Mr. Prendergast: "And they all refer to other mining properties after a settlement was

(Testimony of Bishop Paul P. Rhode.)

made. They have nothing to do with the initial agreement. Now, this man is charged with violation of the Securities Act and Mail Fraud, upon a representation, which counsel has asked him about, that took place in the East, and in the meantime—and this witness has so testified—there was a settlement of two lawsuits, one by Archbishop Beckman and one by himself."

The Court: "That wouldn't end the matters so far as the Government is concerned. There might have been two settlements, and if he continues to use the mails in persuance of the scheme to defraud, if he just goes on and runs the property afterwards and all these mining ventures which came to the attention of the Court are private affairs and private settlements between the parties, they are no concern or materiality at all. The only materiality would be to show bias or interest of a particular witness, either by showing that he had brought out or had controversies, or something like that."

The Witness: "I beg your pardon, your Honor, may I——"

The Court: "Just a minute. I am talking."

[49]

The Witness: "All right."

The Court: "I am talking to counsel on a proposition of law."

The Witness: "Yes."

Mr. Prendergast: "If the Court please, I

(Testimony of Bishop Paul P. Rhode.)

am sorry I don't make myself clear yet. I hesitate to say certain things in front of the jury."

The Court: No, no, don't hesitate to say anything in front of the jury. If you go out of the way in arguing the facts I will tell them. I will tell them nothing you state should be considered except as argument."

Mr. Prendergast: "I told the jury that, too, in my opening statement."

The Court: "All right."

Mr. Prendergast: "I am not testifying."

The Court: "I don't want to hear any further argument. The witness has answered the question in the negative about the Hercules Mine. If you ask him the question the answer will be received. I will allow you to receive it, but I will instruct the jury at the proper time the money he got out, even if he got back all of his money, if there was a scheme or device to defraud in the sale of units there is still liability."

Mr. Prendergast: "I have no question about that at all, your Honor."

The Court: "All right."

Mr. Prendergast: "We agree with your Honor in that."

The Court: "I will let you answer the question. It will take less time to have it answered. Unless we move a little more rapidly, I will become a little more active in the proceedings than I have been. I am trying not to

(Testimony of Bishop Paul P. Rhode.)

do that, but we are moving rather slow, very, very slow. So read the last question and I will have the Bishop answer it. I know his previous answer indicated it would [50] be negative anyway, but read it again, Mr. Person, please. It begins with, "Isn't it a fact."

The Court: All right. You may answer the question, Bishop. If it is a question that you can't answer "yes" or "no", you may explain. It is better to give the answer and then give the explanation.

The Witness: Pardon me, what was the wording of that, please—gave me an interest? Is that the idea?

The Court: Well, yes; he meant gave you. You didn't mean offer him, did you?

Mr. Prendergast: No. I meant delivered it to him.

The Court: Delivered.

A. Here is what happened: I was tendered a certificate of 84 shares in the Hercules Mine by the Reverend Stephen Bubacz, and I refused to accept them.

The Court: All right.

Mr. Prendergast: Q. Referring to the Government's Exhibit 68, which is a letter dated July 27, of 1939, addressed to Phillip Suetter and signed by yourself, Paul P. Rhode, Bishop, may I ask what you meant by the statement: "but as a general proposition I am

(Testimony of Bishop Paul P. Rhode.)

of the opinion that you should confine your efforts to bring in one mine, the Josephine, into production and let everything else go"? What did you mean by "everything else"?

A. I mean everything else. I mean those—I mean the other mines that were named from time to time in the letterheads, I believe, and his reference to California Mine and other mines. I had nothing to do with that and I wanted him to remain true to the terms of the contract, of the trust agreement.

Q. Referring to Government's Exhibit 69, which is a letter from Phillip Suetter addressed to the Most Reverend Paul P. Rhode, dated August 25, 1939, under the letterhead of the Oregon Mining Investment Company, Incorporated, "Used the check you sent me to purchase some equipment especially a new tractor as I had little luck in getting the use of the one in California. [51] You know I was to have the use of the one turned over to the Archbishop but they seem to have it busy all of the time. I did not want any trouble with Monsignor so deemed it advisable to buy one of my own." What was your understanding from that paragraph in that letter in regard to his inability to get the tractor from the Archbishop on the California property?

A. My understanding was that the Archbishop and the Monsignor, and so on, were

(Testimony of Bishop Paul P. Rhode.)

conducting an enterprise of their own, with which I would have nothing to do.

Q. Did you have any objection to Phillip Suetter using these funds that you were sending him to purchase the equipment for the operation of the Josephine Mines?

A. I did not know that he was using those funds in that way.

\* \* \* \* \*

Q. Bishop Rhode, I am now referring to the Government's Exhibit 70, which is a letter dated November 22, 1939, addressed to you, Reverend Paul P. Rhode, Green Bay, Wisconsin, written by Phillip Suetter, and after stating that upon Suetter's arrival west he found one of his men had broken his leg in four places and found things in a difficult situation, "However, this Monsignor here has never tried to use anything toward me but malice. For your information, I have news presented to me that he has been to a certain attorney's office with his attorney, tried to accuse me of forging some writing on those notes." Do you know the notes he referred to by that?

A. I don't know.

Q. Do you know of any notes that were involved in these transactions at all?

A. What notes in particular, please, do you refer to?

(Testimony of Bishop Paul P. Rhode.)

Q. Well, first of all, I am referring to this wording in this letter about some notes, but you say you don't know what he referred to; is that correct—that you didn't know what notes he referred to?

A. I know of nothing definite. There is no definite note that I might connect up with the statement of Mr. Suetter there.

Mr. Prendergast: May I have this marked for identification, please?

(Letter marked Defendant Exhibit 72 for identification) [52]

Mr. Prendergast: Will you please hand the Defendant's Exhibit 72 for identification, Bishop Rhode, and tell us if you can identify the same.

A. I identify this note, this letter.

Q. You didn't?

A. I identify it, I say.

Q. You identify that letter? A. Yes.

Q. And that is what?

A. That is in reference to a loan the Archbishop sought to obtain from me and this loan was extended to him as the Archbishop of the Archdiocese of Dubuque, and it was extended to him with the stipulation that it was to him personally, with responsibility exclusively and entirely his and no one else's. The amount advanced to him on his personal note has nothing to do with Mr. Suetter or this trial.

(Testimony of Bishop Paul P. Rhode.)

Q. Why did you write a letter to Mr. Suetter about that now?

A. Because Suetter evidently had some understanding with the Archbishop as regards further assistance from him and he sent me his letter with one of these notes that were being disposed of. I returned this to the Archbishop and I told him "Our understanding was that this will be a personal loan and I will accept no paper on which Mr. Suetter's name figures." That was the end of that matter.

Mr. Prendergast: May I have the letter, please?

The Witness: Yes.

Mr. Prendergast: This letter bears your signature, does it, Bishop Rhode? It is dated April 10th, 1938. A. Yes.

Mr. Prendergast: If the Court please, at this time I move the admission of Defendant's Exhibit 72 for identification.

Mr. Dillard: May I glance at it, please?

Mr. Prendergast: Yes. Pardon me. [53]

Mr. Dillard: (after examining paper) No objection.

The Court: Received.

Mr. Prendergast: Bishop Rhode, may I read this Defendant's Exhibit 72 to Mr. Phillip Suetter, Chicago, Illinois, dated Green Bay, Wisconsin, April 10, 1938:

(Testimony of Bishop Paul P. Rhode.)

“Dear Mr. Suetter:

“I have made arrangements with Archbishop Beckman enabling him to assist you with ten thousand dollars.

“To effect this he took the note which you had kindly left with me and gave me in its place another more suited to my purpose. I hope that this will make no difference to you provided that you get the help you are in need of.

“No doubt the Archbishop will get in touch with you during the next few days.

“As matters stand at present, I will not be able to contribute any more; if they change for the better, I will gladly give you what be in my power.

“I suppose that you can be reached at the Stevens Hotel. When you leave the West please notify me.

“Wishing you a happy Easter and all success in your venture, I am,

Sincerely yours,

PAUL P. RHODE,

Bishop.”

Q. This letter states that you made arrangements with Archbishop Beckman enabling the Archbishop to assist Suetter with ten thousand dollars? A. Yes.

Q. What arrangements were those?

A. Namely, the ones that I have already

(Testimony of Bishop Paul P. Rhode.)

touched upon; that I would extend a loan to the Archbishop of \$10,000.00 on his individual and personal responsibility and cognizance. Now I don't know what transpired between the Archbishop and Mr. Suetter. Mr. Suetter is evidently under the impression——

Q. Well, just a moment. I am sorry, I can't ask for your impression.

The Witness: All right. Very well.

Q. You state further, "To effect this"——

A. Yes.

Q. —the Archbishop took the note "which you had kindly left," which Suetter had left with you? [54] A. Yes, sir.

Q. And you say Archbishop Beckman gave you in its place another more suitable to your purpose? Now what was the difference in those notes?

A. Simply this, as I have already stated: That I would not take any of the mining guaranties and Mr. Suetter's signature. My dealing in this case was directly with the Archbishop, for him to make use of this money as he saw fit. Now I did not directly contradict Mr. Suetter for the sake of—well, you might say courtesy. That was all.

Q. In other words, the note that the Archbishop had left with you was a note on the Archdiocese; is that correct?

A. The first note was signed by both of them and I refused to accept that and I told

(Testimony of Bishop Paul P. Rhode.)

Archbishop that he knew the understanding, that it was to him—the loan was made to him and not to anybody else.

Q. Bishop Rhode, I am sorry to have to repeat the question. The first note was a note signed by Archbishop Beckman on the Archdiocese of Dubuque, payable to Phillip Suetter; is that correct or not? A. No.

Q. How was the first note made out?

A. The first note sent to me was a note signed by the Archbishop and by Mr. Suetter, and I returned the Archbishop the note and told him that was not the agreement; that I would accept his signature only.

Q. The first note that was sent to you was a note payable to you, signed by Archbishop Beckman and Phillip Suetter?

A. And Phillip Suetter.

Q. And you refused to take a note with Phillip Suetter's name on it?

A. I refused to take that, yes.

Q. And that was some time prior to April 10, 1938; is that correct? Your letter was dated April 10, 1938.

A. Well, very well, then; the date stands. Naturally so.

Q. Did you discuss this mining property with Archbishop Beckman? A. No. [55]

Q. Did he make any report to you at any time? A. No, not to any extent.

(Testimony of Bishop Paul P. Rhode.)

Mr. Prendergast: May I have this marked for identification.

(Letter, Defendant's Exhibit 73 for identification.)

The Witness: May I correct myself to one extent.

Mr. Prendergast: Yes, you may.

The Witness: On one occasion I did—we met—we did converse on this subject. That was the only time, it seems to me—well, maybe another time, too. But the purpose was really not expressly about the mine, but the proposition was brought up.

Q. Well, did you discuss the mine?

A. To an extent we did, yes.

Q. Would you please hand the witness Defendant's Exhibit 73 for identification and ask him to examine the same.

A. This refers to a conversation that I alluded to.

Q. Yes. This is your signature on there, Bishop Rhode? A. Pardon?

Q. That is your signature on that exhibit?

A. This is my signature, yes.

Q. And the date is what, please, on that exhibit? Will you give us the date of that letter?

A. The date of this letter is April 7th, 1939.

Mr. Prendergast: May I have it, please, Mr. Bailiff? May I have admitted into evi-

(Testimony of Bishop Paul P. Rhode.)

dence Defendant's Exhibit 73 for identification?

Mr. Dillard: No objection.

The Court: It will be received. (Received)

Mr. Prendergast: Referring to Defendant's Exhibit 73 may I read this to you, Bishop Rhode.

"Bishop's Residence, Green Bay, Wisc. Box 65, April 7, 1939.

"Mr. Phillip Suetter, Grants Pass, Oregon

"Dear Mr. Suetter: I have had a talk with the Archbishop. It was quite interesting and gave me a better understanding of the situation at the camp. [56]

"I wish that I were better fixed financially but as intimated before, I have practically come to the end of my means. I will however do what I can to help you round out your equipment, though it be not much that I can do.

"Enclosed please find check in payment of two additional units. Kindly make out a certificate and mail same to me.

"If you could give me time enough, perhaps I will be able to contribute a little more. Kindly therefore write me when at the very latest payment must be made. I would like to have as much time as possible. It may be that I will be able to raise two or three more.

"Well, continue the good work you are

(Testimony of Bishop Paul P. Rhode.)

doing and may success crown your efforts.  
Wishing you a happy and blessed Easter, I  
am,

Sincerely yours,  
PAUL P. RHODE,  
Bishop”

Q. Am I correct in understanding that you discussed this mine with the Archbishop, who had formerly, from the letter, inspected the property? A. Yes.

Q. And after that, after discussing the properties with the Archbishop, some time prior to April 7, 1939, you then wrote for two additional units? A. Yes.

Q. And was this offer to purchase two additional units based upon what you learned from the Archbishop?

A. Yes. I took his statement as sort of a recommendation, and partly it was owing to his—owing to that I decided to.

Q. Now do I understand correctly that you testified this morning just before lunch that you were still the owner of Suetter Placer Mine Units or certificates. A. I am.

Q. I believe that the last question that counsel for the Government asked you, Bishop, this morning, was in reference to a law suit. Counsel asked you if it is not true that you filed a law suit against Suetter and that you settled the case with Suetter and released Suetter

(Testimony of Bishop Paul P. Rhode.)

from any liability and had the case withdrawn; is that correct? A. Correct.

Q. And he read to you from same instrument, which he has not introduced into evidence, but asked you if all liability for any claims by Suetter [57] by you against Suetter, were released, of every kind and nature; is that correct?

A. I didn't quite understand your question, Mr. Prendergast.

Q. Do I understand correctly that settlement of that law-suit—that in the settlement of that law-suit you released Suetter from any claims of any kind and nature? A. Yes.

Q. What was the consideration for that settlement?

A. The Archbishop urged me to desist in that lawsuit because of the notoriety and at the same time pledged me that he would take care of the funds invested by me, and those were his words: "I will take care of you."

Q. Yes. And it was about that time that the Archbishop took over this Hercules Mining Corporation and took over these Hercules properties and was operating independently, as you have testified—independently from Suetter; that is correct isn't it?

A. I must beg your pardon, but will you kindly give me that again.

Q. Yes, I will be glad to. At that time the Archbishop had taken over certain properties

(Testimony of Bishop Paul P. Rhode.)

from Suetter which were put into another corporation called the Hercules Mining Corporation, and which you have testified here this morning the Archbishop and others than Suetter were operating independently?

Mr. Dillard: Just a minute. Excuse me. I just want to inquire whether it appears that the question is calling for some hearsay answer by the witness. I doubt if he knows the facts that they are inquiring about.

The Court: Well, I think the Bishop probably understands that he can testify only to facts which came to his knowledge; not hearsay, something he heard from someone else.

Mr. Prendergast: Am I correct in this statement: That this morning you testified that there had been some adjustment, some settlement, [58] some compromise or agreement between Phillip Suetter and the Archbishop?

A. Yes.

Q. Through which the Archbishop took over certain of the mining properties from Suetter as part of the transaction, and that those mining properties were put into another corporation, which Suetter had nothing to do with, and which the Archbishop and this other group were operating themselves?

Mr. Dillard: Excuse me. If the Court please, if I remember correctly, he said he understood something like that had taken place, all I want to object to is asking the witness to

(Testimony of Bishop Paul P. Rhode.)

try to testify to something he could only know by hearsay. That is not proper cross-examination for that reason.

Mr. Prendergast: Q. Maybe this will refresh your memory, Bishop, you said that Father Bubacz then offered you eighty four shares in the Hercules Mining Corporation and you refused to accept it.

A. Then. When and where, I would like to know?

Q. I don't know. You testified later Father Bubacz offered you eighty-four shares in the Hercules Mining Corporation. You didn't say when and where.

A. Very well. I also testified to this fact: that I was not involved in any of their purchases and undertakings and doings; that my activity and interest was limited to the placer mining, Suetter Placer mine, and as regards these other operations, and so on, Mr. Dillard I believe stated what I knew was only by hearsay, and it was a surprise to me when I was offered eighty-four shares in these other mines, whatever they were.

Q. But, Bishop, what I am particularly talking about now is your statement, just made a few minutes ago, that the consideration for your settlement with Suetter was an agreement upon the part of the Archbishop to take care of you so far as the monyes that you had invested. [59]

(Testimony of Bishop Paul P. Rhode.)

A. Whether that was the understanding between me and the Archbishop, that he would?

Q. You have testified to that. Was that the understanding?

A. That he would—as I said, he used the words: "I will take care of you."

Q. Yes. And how did you understand he would take care of you?

A. Well, that remains to be seen, as to whether he will do anything.

Q. Yes, but you did not accept the eighty-four shares of stock?

A. No, I did not.

Q. In the Hercules Mines?

A. I did not.

Q. Now what was your understanding in making this settlement with Mr. Suetter, about whether or not you would, after settling with him, continue to maintain ownership in the properties that he claimed? In other words, how can you now claim—how do you now claim ownership in the Suetter Placer Mines by reason of these certificates if you have already settled all claims?

A. I claim ownership of these certificates on the basis of my payments made to him.

Q. But the Archbishop has agreed to pay you back for that?

A. That remains to be seen, whether I will recover or not. I hope I will.

(Testimony of Bishop Paul P. Rhode.)

Q. If the Archbishop does not pay you, then you are going to hold these units?

A. Of course.

Q. Yes. And you still consider them of value?

A. Well, that remains to be seen, too. You can't attribute that to me under the circumstances, I think.

On re-direct examination, after identification by the witness, Bishop Rhode, Government's Exhibit 74 was admitted, a letter that reads as follows:

"Reverend Paul P. Rhode, Dec. 16, 1939

"Box 65, Green Bay, Wisconsin.

"Dear Bishop: Having just returned from the East, and from Medford [60] tonight, I am writing you just a few lines.

"I was informed by my attorneys that you had written them. I also received indirectly a rumor that my payment on my contract of settlement due me on February 3rd. may not be paid.

"For your information, and others you might possibly come in contact with, if that is not (in) my attorneys hands on the 4th. of February Reverend Archbishop Beckman will find a lawsuit in Dubuque, Iowa, filed against him and the diocese. I have spent better than seven thousand dollars, all on their account, and personally Bishop, I am hurt and disgusted.

"If they are looking for additional publicity

(Testimony of Bishop Paul P. Rhode.)

they are going to receive it this time at home. This is not a threat, but a promise. The Archbishop assumed your interest; however this does not matter. I own other interests besides the mines. Everything I have done for the Archbishop's interest, but this manager of his, well, his own record of Lincoln where he was born and raised speaks for itself.

"At the present writing I am just simply not able to give you any immediate relief. They have taken my surplus trying to protect you and myself as well as the Bishop, all on account of the false charges which were filed against me here, which am sure they will answer for sometime.

"We have started operating the Josephine last week. It was the first water we had. The bulk of our investment is in the mine which the Archbishop controls, and you know that. Now they took a \$9,000.00 new tractor and an Armstrong Drill cost \$4,300.00, with all the tools, two Ford autos, Federal truck and air compressor cost \$1,700.00. The autos cost better than \$1,800.00. One International truck  $\frac{3}{4}$  ton cost \$960.00. Practically all out of your investment. Therefore to get this straightened around your cooperation and no one will get hurt, and the cash money of \$3,000.00 I need you sent me in the early part of '39 went for rails and electric wiring and buildings. Now the Archbishop project which you have an in-

(Testimony of Bishop Paul P. Rhode.)

terest in and always did have providing the Archbishop does not let O'Laughlin wreck him the same way he did in Lincoln.

"Bishop, please realize this. I am not going to make any promises that I cannot fulfill, but your investment you made through me you will never lose a dime!"

"I sincerely hope your operation is successful, and I offer up my prayers for you tonight.

Your Friend,

PHILLIP SUETTER

The Court: Any further questions?

Mr. Prendergast: May I inquire about this letter?

Mr. Dillard: What?

Mr. Prendergast: Were you inquiring about this letter or just reading it?

Mr. Dillard: No; I was just reading. [61]

There was also read into the record the following portion of the deposition of the defendant, Philip Suetter, taken on January 3, 1941, in Portland, Oregon, in connection with the case of Rhode vs. Suetter, a civil case in the United States District Court for the District of Oregon:

"Q. To what extent were mining operations conducted on the California properties; that is, the Ajax and Mt. Reubens Group?

A. I just judge about \$90,000 worth of development.

Q. Was that work you conducted yourself?

(Testimony of Bishop Paul P. Rhode.)

A. Yes, well—myself and foreman. I had an engineer named Hayton work for me just a short time.

Q. William F. Hayden?

A. I don't know his initials. He used to be at Grants Pass, and back there somewhere he used to work for me.

Q. Where did you receive the money for that development work that you speak of?

A. I had some money of my own and I got some from Archbishop Beckman, and \$3,000 of that came from Bishop Rhode.

Q. That went into those properties?

A. Well, it went into part of it for equipment and so on." [61-A]

The Court: Any members of the jury desire to ask Bishop Rhodes any questions?

A Juror: May I ask a question?

The Court: Yes.

The Juror: Where did you get your competence and all to invest thirty thousand dollars through Mr. Suetter?

A. I largely took that step on my own responsibility, trusting that what I heard in regard to Mr. Suetter, and later on learning that the charges which had been preferred against him in Indiana and Illinois, I believe, had not been sustained, that he was declared innocent, I think, or at least exonerated. And what I learned from time to time from Mr. Suetter as he went along, because for a long time there

(Testimony of Bishop Paul P. Rhode.)

was really no trouble whatsoever, everything seemed to go along in the normal and satisfactory way, until that unfortunate break took place, and so I assumed full responsibility for the investment which I made.

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### ARCHBISHOP FRANCIS J. BECKMAN,

was thereupon produced as a witness for the United States and he testified that he had met the defendant, Phillip Suetter, in 1936; that said meeting was at the Stevens Hotel in Chicago, Ill., that those present were Archbishop Beckman, Phillip Suetter, William Phillips of the Link-Belt Co., Father Klott, manager of the Archbishop's College and a mining engineer named Diax for the Archbishop's interests; that Suetter described the property and told Archbishop Beckman that machinery was needed; that they all discussed the property and inquired if the land had been tested; that Beckman was informed that some 20 test-holes had been dug.

Archbishop Beckman further testified that the defendant, Suetter, represented himself as sole owner; that there was gold on the property; that Phillips, engineer of the Link-Belt Co., agreed to this and so informed Archbishop Beckman; that Phillips insisted the gold was there and that he, Phillips had made a personal test of the gold content of the property; that Suetter informed Beckman that Phillips was investing in the property

(Testimony of Archbishop Francis J. Beckman.) as were other Link-Belt employees; that Phillips was also interested in managing the property on a royalty basis. [62]

Archbishop Beckman testified that he had first heard of the Suetter Placer Mines from Mr. Ed Hogan, who told him that he understood that the Archbishop wished to build a seminary and that he (Hogan) had a way of helping to finance it through an investment in the Suetter Placer Mines.

Archbishop Beckman further testified that later on Suetter told him that Hogan was not the owner of the property, that he, Mr. Suetter, was the owner and that he had sent Hogan out to represent him and raise cash for him, that Suetter thereupon delivered two units of Suetter Placer mines for \$2,000 which the witness, Beckman, had already paid Ed Hogan.

Archbishop Beckman further testified that he asked Suetter whether he had clear title to the property, to which Suetter replied that he had clear title to it and was the sole owner.

The witness further testified that Suetter told him that Philips was investing \$5,000 and that the employees of Link Belt Company were putting in \$80,000. [62-A]

Archbishop Beckman testified that Suetter later informed him when he had returned the money to the Link-Belt people when he decided not to purchase machinery from Link-Belt.

The further testimony of the witness was that he had given the defendant checks in varying sums

(Testimony of Archbishop Francis J. Beckman.) when the defendant Suetter, needed money to buy equipment; that he Archbishop Beckman, executed promissory notes to be discounted only to Archbishop Beckman's personal friends; that at first the notes were only personal obligations but were later changed to read "The Archdiocese of Dubuque, by Francis J. Beckman, Archbishop".

The United States thereupon offered in evidence Govt's. Exhibit 76, a group of cancelled checks, identified by the witness, Archbishop Beckman, as checks drawn by him, and payable to the defendant, Phillip Suetter, on the following dates and for the following amounts:

Feb. 5, 1937	\$ 600.00
Feb. 11, 1937	\$ 500.00
March 11, 1937	\$1,000.00
April 26, 1938	\$ 100.00

The United States further offered into evidence, after identification by the witness, Archbishop Beckman, Govt's. Exhibits 77 and 78, the same being "Units" in the Suetter Placer Mines, running in favor of the witness and signed by the defendant Suetter and being identical in form with Govt's. Exhibit 40 heretofore set out.

The U. S. also offered in evidence, after identification by the witness, Govt's. Exhibit 79, dated March 28, 1938, which reads as follows:

"Terms of Agreement in re Suetter Placer mines located in Josephine County, Oregon.

"Know All Men by These Presence:

(Testimony of Archbishop Francis J. Beckman.)

“First: That I, Phillip Suetter, of Portland, Oregon, undersigned herewith, own clear title to the following mining premises located in Josephine County, near Kerby, in the state of Oregon, to-wit:

“(a) The Hunt and George Mine,” not reading the full description.

“(b) The Mud Flat placer claim;

“(c) The Whiteside No. 2 placer claim;

“(d) The Watts extension No. 1 placer claim;

“(e) The Triangle placer claim;

“(f) The Stockbarger placer claim;

“(g) The Battle Bar placer claim;

“(h) The Missing Link placer claim;

“Second: That a considerable portion of the funds for the purchase of the above described Suetter Placer Mines in Josephine County, State of Oregon, were attained from the sale of certain promissory notes signed [63] by Francis J. L. Beckman, as Archbishop of Dubuque, Iowa, payable to the order of Phillip Suetter at the American Trust and Savings Bank in Dubuque, Iowa.

“Third: That approximately ninety-five thousand dollars have been invested by Phillip Suetter in the Suetter Placer Mines in Josephine County, Oregon from his own estate and from his personal sources of income.

“Fourth: That the builders of all mining machinery and equipment, now used or to be

(Testimony of Archbishop Francis J. Beckman.)

used at the Suetter Placer Mines in Josephine County, Oregon, will furnish complete itemized statements of all costs whatsoever to Phillip Suetter, who does hereby obligate himself to submit true and identical copies thereof to the Archbishop Francis J. L. Beckman at Dubuque, Iowa.

“Fifth: That complete and detailed financial reports with appropriate inventories pertaining to and covering all transactions involving the Suetter Placer Mines, in Josephine County, Oregon, will be transmitted by Phillip Suetter, undersigned herewith to Archbishop Francis J. L. Beckman at Dubuque, Iowa, whenever so requested.

“Sixth: That all net proceeds from the operation of the said Suetter Placer Mines in Josephine County, Oregon, shall be remitted by Phillip Suetter, undersigned herewith, to Archbishop Francis J. L. Beckman at Dubuque, Iowa—after deducting the costs of labor and actual operating expenses in connection therewith—until all outstanding Promissory Notes, issued on this mining project and given to Phillip Suetter by Archbishop Francis J. L. Beckman are fully paid with interest accrued to date of such redemption.

“Seventh: That all books, receipts and accounts shall be always open and available for inspection and examination by duly authorized

(Testimony of Archbishop Francis J. Beckman.)

representatives of Archbishop Francis J. L. Beckman.

“Eighth: That this instrument signed by Phillip Suetter, of Portland, Oregon and given under seal, properly attested, to Archbishop Francis J. L. Beckman, is intended to serve as a supplement and addendum to the Suetter Placer Mines Trust Agreement, already executed and delivered, covering interests and rights of the respective parties.

“Ninth: That any and all properly accredited assigns are empowered hereby and instructed to make equitable and honest adjustment of Phillip Suetter’s obligations towards Archbishop Francis J. L. Beckman and the Archdiocese of Dubuque, Iowa, in case of his death, serious illness or inability to act.

“Tenth: That the lawful heirs of Phillip Suetter are urgently requested and hereby authorized to carry out all the promises and representations herein elucidated, in strict accordance with the desires, instructions and intentions of Archbishop Francis J. L. Beckman to whom the undersigned, Phillip Suetter, is indebted in divers ways and means, beyond hope of adequate reciprocity or sufficient recompense.

“In Witness Whereof, I, Phillip Suetter have hereunto set my hand and seal this 26th day of March, A. D., 1938”. (Signed) Phillip Suetter.”

(Testimony of Archbishop Francis J. Beckman.)

To the admission of said Exhibit the defendant then and there duly objected on the grounds and for the reason that the same was irrelevant and incompetent, that the [64] government should elect as to which count or counts in said indictment the evidence was directed, and the purpose for admitting said document into evidence. Counsel for the United States contended that said Exhibit showed continuous false representations by the defendant. The Court overruled the objections and counsel for the defendant duly excepted to said ruling.

With reference to Government Exhibit #79, dated March 28, 1938, set forth on Page 63 of the Bill of Exceptions, Archbishop Beckman testified as follows:

"Q. Who delivered it to you?

A. Why, Mr. Suetter.

Q. Was it delivered to you as a result of some payment you made to Mr. Suetter for the interest in these so-called Suetter Placer Mines?

A. It was delivered to me as the result of my insistence that he get an account of my moneys that I had given him. He didn't keep—

Q. At or about the date it bears?

A. Yes. He didn't keep any books. Every time I saw him or communicated with him I asked him, 'When are you going to give me

(Testimony of Archbishop Francis J. Beckman.)

an accounting?' He said, 'Well, I have got it all in my pocket. I am making it out. I will have a perfect accounting for you pretty soon.' Well, nothing came of it, and I says, 'Look here, anything happen to you any time where would I be? In the first place, I want you to insure your life to cover me.' Well, he claimed he had applied for insurance but he was over weight and he couldn't get the insurance he wanted. Then I said, 'I insist now that you have got to give me an accounting. This is no way of doing business. And, secondly, I want some kind of an agreement drawn up.' And this was the result, but I wasn't satisfied with it. From this agreement you would think that he and I were the only ones that owned the Josephine mines. There were others interested in it, too. It was mainly ours. It says before anybody——"

Archbishop Beckman further testified that subsequent to the date of the execution of the agreement (Government Exhibit #79) he borrowed \$40,000 from the Des Moines Bank at the insistence of Suetter, who told him that all he needed was [64-A] and that he would never bother him for another cent, that the \$40,000 was needed to put up a mill, and that the mill would certainly produce; that in February, 1939, he became so worried that he made a trip to the Coast but did not find a mill on either the Suetter Placer Mines property in Oregon or the St. John Boxco in California. In

(Testimony of Archbishop Francis J. Beckman.)  
answer to the question "Was there ever any mill  
built on the California property?" the witness an-  
swered "I didn't see any."

In reference to Exhibit 79, the witness Archbishop Beckman testified that he had no agreement in writing with defendant Suetter and he wanted some document giving him, the Archbishop, control of the properties. Archbishop Beckman further testified that he knew at that time that others, especially Bishop Rhode, Father Bubecz and Ralph Montag had interests in the property. There was further admitted into evidence, United States Exhibit 82, dated May 14, 1938 at Dubuque, Iowa, in which the defendant acknowledged that he had received from Archbishop Beckman promissory notes in the amount of \$253,750.00, of which \$125,000.00 were outstanding. The document also recited that the defendant acknowledged he had received the sum of \$59,000.00 from Archbishop Beckman. The Archbishop testified that the defendant Suetter was to purchase machinery and pay expenses with money so advanced to Suetter.

Archbishop Beckman further testified that from May 20, 1938 to March, 1939 he had issued his checks to Suetter in the approximate sum of \$40,000.00. In February, 1939, Archbishop Beckman visited the property and personally inspected the same. He testified that he visited the property and they were then operating but without much result. He testified that Suetter had acquired other mining properties in California and had sold this

(Testimony of Archbishop Francis J. Beckman.) dredge without Beckman's consent. Later Beckman was informed that Suetter had obtained certain Wheeler properties on contract the price to be taken out of ore production. He further testified that he asked the defendant for an accounting and insisted upon an agreement with Suetter giving 60% of all the various properties to Beckman and 40% to Suetter.

Archbishop Beckman testified that he had sent the defendant \$40,000.00 from Dubuque, Iowa to Grants Pass to purchase a mill to be constructed on the California property after his visit in February, 1939.

He testified that later (June, 1939) he sued the defendant Suetter, which case was settled by Beckman taking over all of the mining properties other than the original Josephine Mines; agreeing to take [65] care of the interests of Father Bubacz and Bishop Rhode, and agreeing to pay to Suetter the sum of twenty thousand dollars; that said settlement agreement was entered into in the summer or early fall of 1939.

Archbishop Beckman further testified that he found out all of a sudden that Suetter had acquired another mine called the Don Bosco or St. John Bosco, and that he took Suetter to task for not confining his operations to the Josephine property in Oregon; that Suetter said that he had found a better mine, and in reply to the Archbishop's question "Why don't you develop the Josephine?" Suetter said "The Josephine is no good. There are

(Testimony of Archbishop Francis J. Beckman.) "too many boulders. You can't work the Josephine."

Archbishop Beckman further testified that later on he found out that Suetter had abandoned the Don Bosco and had sold the gold-washing plant without permission.

Archbishop Beckman testified that he demanded an accounting from Suetter several times, and that finally he told Suetter "You have got to give me an accounting, that is your last chance or I am going to get an injunction," and that it was after that that he instituted a suit for an accounting. [65-A]

Upon identification by Archbishop Beckman, the United States offered into evidence Government's Exhibit 89, a letter that reads as follows:

THE STEPHENS

Chicago

Saturday 12/5/36.

"Most Rev. Francis G. Beckman

"Dubuque, Iowa.

"My Dear Archbishop—

" Have been waiting further word from you this week, and it has come to my mind that more information might help matters at Dubuque in the way of operation and ironing out different items, could if you thought best arrange to come to Dubuque home Mr. Gilmore along with Picture Machine which I believe would help things considerable.

" We have had notice of the price advance

(Testimony of Archbishop Francis J. Beckman.)

on all the motors steel etc. and have protected ourselves for ten *dayes*, suppose your home noticed the general advancee in wages and raw materials.

" Inclosed you will find two units as per the two thousand dollars delivered to Mr. Hogan, you will please fill out the pink copy so we will have it for our records, if any other money was advanced to Mr. Hogan either by yourself or Fr. Kessler please let me know and I will protect you.

" As said before all machinery is advancing from five to ten percent, not only the Link-Belt but also the Keystone Drill and the Tractor Company at Peoria, but we have protected ourselves on all.

" It will be possible to save as much as twenty to thirty thousand advance in price by putting down a small payment on the above machinery and if at all possible would like to know what we can look forward to the first of week in the way of some moneys to put with what we expect to collect here in Chicago over the next few weeks.

" Am enclosing addressed envelope for return of the pink unit slips.

" We thank you much for kind remembrance of us in your daily Mass and prayers in that we be guided by the Grace of God.

(Testimony of Archbishop Francis J. Beckman.)

" Hoping that Your Self and all will see  
your way to go along with this I am,

Your servant

PHILLIP SUETTER.

The United States then offered in evidence, upon identification by Archbishop Beckman, a group of cancelled checks, being Government's Exhibit 83, from the witness to the defendant, Phillip Suetter, bearing the following dates and for the [66] following amounts:

May 3, 1938	\$ 5,000.00
May 9, 1938	\$10,000.00
May 10, 1938	\$ 5,000.00
May 22, 1938	\$10,000.00
July 13, 1938 (Western Union)	\$ 557.67
Oct. 7, 1938	\$ 2,000.00
Dec. 2, 1938	\$ 5,000.00
Dec. 12, 1938	\$ 2,000.00
Jan. 2, 1939	\$ 2,000.00
Jan. 24, 1939	557.67
Feb. 8, 1939	\$ 500.00
Mar 8, 1939	\$ 7,500.00

There was also offered in evidence by the United States Government's Exhibits 84, a group of promissory notes identified by Archbishop Beckman as having been executed by him, in the amount of \$188,-500.00, all marked "Returned and Cancelled", which the witness, Archbishop Beckman, testified had been returned to him by the defendant, Phillip Suetter, upon the termination of their civil suit and as

(Testimony of Archbishop Francis J. Beckman.)  
part of the consideration for the settlement thereof.

There was also introduced, upon identification by the witness, Government's Exhibits 85 and 86, groups of promissory notes executed by Archbishop Beckman and sold by and on behalf of the defendant, Suetter, in amounts of \$14,500.00 and \$15,000.00, also Government's Exhibit 87, a group of promissory notes returned and cancelled by Archbishop Beckman in the sum of \$88,000.00.

The witness further identified Government's Exhibits 88 and 89, the same being the letters referred to in the indictment in Counts 3 and 4, and testified that he had received the same in the ordinary course of mail at or about the time the same were dated.

The United States offered into evidence, after identification by Archbishop Beckman, Government's Exhibit 90, a letter which reads as follows:

Archbishops Chancer  
Cor. Eleventh and Bluff Streets,  
Dubuque, Iowa

November 14, 1936.

Dear Archbishop:

I came to Dubuque today but missed you.  
To put it in a few words tell you the object of my visit, I am the [67] owner of the property in which Mr. Hogan and I am now in Chicago purchasing machinery at this time. Needless to say I am in need of money to pay down on the machinery and I would like to have

(Testimony of Archbishop Francis J. Beckman.)

something definite at this time as I have other offers for my property I would like to interview you before I accept any other offer. I feel that I can give you information on the project that others cannot give you. I would therefore like to see you at the earliest possible time. I will gladly come to Dubuque or to any other place where you can arrange to meet me. Kindly address your notice of appointment by wire or telephone collect to the Stephens Hotel, Chicago.

Sincerely yours,

PHILLIP SUETTER.

Government's Exhibit 91, a letter which reads as follows:

November 14, 1936.

Dear Archbishop Beckman:

I came to Dubuque today in the hope of seeing you but I missed you.

I am anxious to speak to you about the project Mr. Hogan has taken up with you. I feel that if I can have a personal interview with you that I can give you information on the matter which others are not in a position to give.

I am in Chicago at the present time purchasing machinery to get operations under way and of course I could use money to apply on the purchase of said machinery.

I have offers for the property but I do not

(Testimony of Archbishop Francis J. Beckman.)

wish to accept them until I have an opportunity to talk to you.

I will meet you at any place you designate and will gladly go into the matter thoroughly with you.

I am staying at the Stephens Hotel, Chicago and would appreciate it if you would wire or telephone me collect and name a place where we can meet.

My object is to have a definite answer either one way or the other. My object is not so much to get money from you I have to know whether or not you wish to go into the project, more extensively. I feel that I can explain how you can get quick returns on this personal investment.

Sincerely yours,

PHILLIP SUETTER.

Government's Exhibit 92, a letter which reads as follows:

Portland, Oregon,  
May 20, 1938.

Most Reverent Francis J. Beckman:  
Dubuque, Iowa.

Dear Arch Bishop:

I was down to the Electric Steel Foundry looking over the dredge. It is surely a mammoth outfit. They are using the best material and, after [68] looking at the whole set up, you would wonder how they could ever move that

(Testimony of Archbishop Francis J. Beckman.)

over these highways with trucks and you would learn why it takes time to get an outfit of this kind together.

While down there I was informed by their road manager, Mr. Holden, about a property I could purchase on account of friction among themselves, that is a "going plant." This last week's cleanup was 162 ounces, which would be close to \$5,000.00. I am leaving here Sunday for Southern Oregon. I am going to the man who has control, as I was advised that the property could be bought for about \$125,000.00; and by conservative figuring there is still \$1,000,000.00 to ship, \$500,000.00 in this property.

I think it would be well for you to give this a good thought and let me come back to Chicago and sell \$125,000.00 worth of these notes in three weeks or less. You could take this money out of the property within ten months or less and you would still have five to six year's work on this property with the outfit that is working there now. This is another sample of a board of directors causing friction, as I get it. Now, your Grace, give this a good thought. It will be quick money right now.

I hope to hear from you at once what your thought will be on this. If it interests you, I am positive you could send anyone you wished out here, or come yourself. It is one of the best propositions I have ever seen and should not be passed up at the amount it can be purchased

(Testimony of Archbishop Francis J. Beckman.)

at, and by signing one of those agreements which those people in Chicago, wanted, I can sell that many notes within ten days.

Very respectfully,

PHILLIP SUETTER.

P.S. There is nothing in the country like our other property for value, and we will have one of the best dredges in the country when I have finished. I am putting all the pressure on them that I dare, and everything is fine and everybody is happy. I will give you more information after I have looked at the property. It is mighty big thing.

Government's Exhibit 93, a telegram from the defendant, Phillip Suetter to the witness, Archbishop Beckman, dated February 29, 1940, which reads as follows:

Western Union

1940 Feb 29 PM 352

C 262 176 DLC 1/100—Portland Org 29 121P

Archbishop Francis Beckman

Bishop P P Rhode has Sued Me Federal Court  
Here Claiming Thirty Thousand Dollars Not-  
withstanding Your Certain Undertaking and  
Definite Promise Page Four Lines Nineteen to  
Thirty Seven Both Inclusive Our Contract  
Dated Seventeenth of June Last Signed and  
Duly Acknowledged by You in Your Archiepi-  
scopal Capacity as Archbishop of Dubuque Rob-  
erts Office in Medford Oregon Stopping Conse-  
quently You Are Hereby Required and Demand

(Testimony of Archbishop Francis J. Beckman.)

Is Made That You at Once Cause This Rhode Suit to Be Immediately Dismissed and Me [69] Served Harmless and Fully Indemnified From Any of His Claims as of Said Contract Definitely Provides Stop It Also Be Compelled to Make You a Party in the Rhode Suit If It Is Not So Dismissed and Incoude All the Matters and Transactions Between Us Upon Which You Have Defaulted Your Contract So That Your Liabilities to Me Which Have Been Deliverately Neglected Can Be Fully Enforced and Adjudicated Stop Father Kessler Recently Telegraphed Answering My Previous Demand of You for the Settlement of These Matters by This Exigency of the Rhode Litigation Demands Instant Consideration Stop Neither has any Intention Been Given Urgency of Having Tractor and Personal Belongings of Mine to Be Delivered to Me.

PHILLIP SUETTER.

On cross-examination the witness testified that he met the defendant Suetter at the Stevens Hotel in Chicago; that his mining engineer, Daix, stated the properties had not been thoroughly tested; that Phillips of the Link Belt Company favored the property and did not agree with the others that the gold could not be taken from the black sand.

The properties were discussed and it was agreed that further testing was necessary and also the nature of the machinery to be used. Suetter later informed Archbishop Beckman that he was testing

(Testimony of Archbishop Francis J. Beckman.) the properties and had dug twenty test holes. Beckman testified further that he had received a letter, dated January 14, 1937, (Government's Exhibit 46) signed by Phillips of the Link Belt Company stating that they had made some secret tests of the ore and had recovered \$68.00 per ton. The witness further testified that he had had displayed to him Exhibit 43 which contained some approximate figures as to the value of the properties controlled by Suetter as compiled by the Link Belt Company bearing the signature of Phillips.

Archbishop Beckman testified that he knew generally about mining and that he inquired as to water on the properties. He also testified that Phillips had represented that the properties were a good proposition; that later Suetter informed Beckman that he was dissatisfied with the Link Belt Company and was going to return to their employees some money that they had invested; that Suetter had contemplated [70] purchasing certain equipment from Link Belt Company and that he had informed Beckman that he was dissatisfied with the Link Belt people and would buy his machinery in Milwaukee. Beckman stated that he had never seen any machinery purchased by Suetter. Defendant introduced his Exhibit 94, a group of photographs of mining equipment, and the witness admitted that he had seen some of the equipment and photographs.

Archbishop Beckman testified further that he issued the notes first as his personal obligation to

(Testimony of Archbishop Francis J. Beckman.) be sold to friends only; that he had never dealt with brokers; that he had authorized Suetter to add the words "Archdiocese of Dubuque" to the notes; and that immediately thereafter he countermanded that authority upon advice of counsel.

Archbishop Beckman further identified Defendant's Exhibit 95, a letter to Suetter from Beckman dated April 14, 1938, reading as follows:

"Dear Mr. Suetter: I am enclosing check on First National Bank of Chiega for \$10,000 which I deposited in that bank with check from Bishop Rhode of Green Bay. I haven't yet made much progress here—hope to report better tomorrow when I see Father Kessler. Do not hope for much from the Chancery. Will try everything else first. Will try to raise \$10,000 here. Hope you can raise the rest elsewhere. My check will reach the First Nat. Bank Saturday, so will date it Monday to make sure. I hope you are making progress there and striking better customers. There is no hope from the brokers. All are same, all demand same. Regards to Father O'Laughlin. Wishing you the grace and consolation of this Holy Week, I remain, Yours very sincerely, Francis J. Beckman."

On further cross-examination, Archbishop Beckman identified Defendant's Exhibit 96, being a letter to the Indiana Securities Commission which reads as follows:

(Testimony of Archbishop Francis J. Beckman.)

"The Midwest Antiquarian Association, Columbia Museum, History, Art, Science, Columbia College, Dubuque, Iowa, open to the public. Sec. Treas.: Rev. A. G. Kessler, Curator

Dubuque, Iowa, September 3, 1938; To Indiana Sec. Comm.

"This is to certify that the Most Reverend Francis J. L. Beckman, Archbishop of Dubuque, Iowa, in the unrestricted Chairman of the Board of Directors of the Midwest Antiquarian Assoc., a corporation in the State of Iowa founded for the purpose of furthering Columbia Museum. The Art collection of Columbia Museum is valued by experts at \$1,500,000. The insurance coverage on the principal works is \$200,000. He has also many valuable works of Art in his home. A conservative estimated of the [71] value of these pieces of his personal property is \$35,000.

"This is a low estimate of these articles. Any notes issued by him are protected by the articles in his home alone aside from the Museum and the diocean properties under his control.

"The diocean properties are worth several millions of dollars. Rents accruing monthly amount to over \$4,000. Donations and interests bring this monthly income considerably higher. As Archbishop of Dubuque these properties and funds are under his immediate direction and control."

"A. G. KESSLER, Curator"

(Testimony of Archbishop Francis J. Beckman.)

Archbishop Beckman further testified as examination follows:

Q. That is all with that. Now you stated that you became concerned from time to time, Archbishop, about not having anything in writing from Mr. Suetter and having advanced to him certain moneys to buy equipment, and you stated that you felt that something might happen, or anything might happen, to Mr. Suetter and therefore you wanted something in writing from him, and as a result thereof an agreement was provided, at your request, by Mr. Suetter, which is Government's Exhibit 79, the "Terms of agreement re Suetter Placer Mines located in Josephine County, Oregon"?

A. Yes.

Q. That is correct?

A. Yes.

Q. And that was dated March 26th of 1938?

A. Uh huh.

Q. When you knew at that time that Father Bubacz, and Bishop Rhode, and Ralph Montag, were also involved?

A. Yes.

Q. So you knew about Ralph Montag then on March 26th of 1938?

A. Yes.

Q. What did you know about Ralph Montag?

A. All I knew was that he had an interest in the mine, but Mr. Suetter told me that his in-

(Testimony of Archbishop Francis J. Beckman.)

terest and his share was to come out of Mr. Suetter's and never affect mine. [72]

Q. You stated another purpose of having Suetter draw an agreement was that you wanted control, feeling you had put up the money that you wanted control of the properties?

A. Of what I put in; not of all of the properties.

Q. Can you explain that? You wanted control of what?

A. Between him and myself. I wanted it in case he would die, that I would have something to show for it.

Q. What did you mean by control?

A. Control of my own investment.

A. And how would you have control of your own investment?

A. By a suitable document. But I have put in by far, the most money. The others had put in only a very small amount.

Beckman testified that he was not satisfied with the agreement referring to Exhibit 79, and that he was later, on May 14, 1938, supplied with another, being Exhibit 82; that he, after learning of Montag's interest, continued to invest in the properties; that the accounting contained in Exhibit 82 showed \$253,750.00 worth of the Archbishop's diocese notes issued, about half of which were outstanding; that he had invested \$40,000.00 more in cash with Suetter after that date.

(Testimony of Archbishop Francis J. Beckman.)

He further testified that he had visited the properties three times, first in February, 1939, the next early in May, 1939, and the third time at the end of May, 1939, when final settlement with Suetter was made. Beckman stated that he knew the defendant was "bungling" but that he believed in his honesty, and that he had a legitimate enterprise. He identified Defendant's Exhibit 97, as a letter written by Archbishop Beckman to Suetter after his first visit in February, 1939, which reads as follows:

"Dear Mr. Suetter: I want to tell you again how much I enjoyed my visit and how well pleased I am with all I found. You have done wonders! I understand all better now. I hope to raise the necessary fund soon as I get home. Will try every source. Get the Rubens going first—get the richer ore through to get money for others. Send me some of the black sands—keep me posted on cleanups. Don't forget to take your rest—keep your health—and don't drive too fast! We must not tempt providence! Will send for pictures and literature. Again many thanks and regards."

In reply to the inquiry on this Exhibit the witness testified: [73]

Q. And you stated that you found everything satisfactory there, that you understood everything better, and you were well pleased with what he had done? A. True.

Q. Was that a correct statement?

A. True.

(Testimony of Archbishop Francis J. Beckman.)

Q. And that you were going to raise funds, was that in regard to a mill for the—

A. That was for the—

Q. The Wheeler property?

A. The so-called Wheeler property.

Q. That was also known as the Reubens property?

A. I don't remember the name.

Q. What did you refer to when you said "Get Reubens going first"?

A. I suppose that was it.

Q. Yes. And you had examined these properties in person?

A. Everything was going—when I got there everything was going full blast and it looked awful good to me.

There was also introduced into evidence Defendant's Exhibit 98, a letter from the witness, Archbishop Beckman, to the defendant Suetter, dated May 14, 1939, whose material parts are as follows:

"Phil, I am sorry to have to urge you to do so, but I must have things organized and safeguarded under all circumstances in order to make a report to Rome. That is like making a report to our Lord Himself. That is why I so insist a partnership is dangerous because we become personally liable for one another. The present arrangement is uncertain. A corporation is the best. I will be the corporation. I will take only 10% for myself to dispose of for

(Testimony of Archbishop Francis J. Beckman.)

religion, for the Pope for the missions and 70% of the John Bosco for seminary, college, Museum, Charity Bureau, Home Mission Fund, Widow and Orphans, each of these a corporation of which I am the president and which I control so I am in control alone, you 10%. I will never let you down. I trusted you with all of my reputation, same as my life. I love you as a brother. I could cry when I see you hurt. I suffered when I scolded.

"I asked for the notes because I fear to have them out. I will finance it otherwise and will raise enough money at 4%. I durst not have the notes with the Archdiocese of Dubuque on it. They must be my personal obligation with my museum to back them up. So don't fear O'Laughlin. He represents me while I am away. Forget your peeves; don't be babyish. We are men, Catholics, and for the sake of St. John Bosco, of Catherine [74] Tekakwitha, do I ask. We want to avoid any scandal. After all, I put up the money and I should have control of the properties and have the say and dictate the terms. I will protect you."

In reference to the foregoing exhibit the witness testified:

Q. That was the second time, Archbishop, you mentioned you should have control of these properties? A. Yes.

(Testimony of Archbishop Francis J. Beckman.)

Q. And you suggested the formation of corporations for each individual property, in which Suetter was to have 10%? A. Yes.

Q. You finally did obtain from Suetter, approximately at that time, an agreement whereby you acquired 60% of the properties.

A. Yes.

\* \* \* \* \*

Q. So, as I understand it, Archbishop Beckman, after the 11th day of February, 1939, there was a new understanding about these properties and you were the owner of 60% of the property described in this agreement?

A. I was.

Q. In other words, "Whereas, the Party of the First Part," which is Francis Joseph Beckman, "has and is still financing the party of the Second Part in acquiring and developing mines known as: St. John Bosco, also known as the French Hill Mines, in Del Norte County, California; the Norton Mines in Josephine County, Oregon; and the California Mine, also known as the Reubens Mine, on Graves Creek, Josephine County, Oregon.

"Now Therefore, it is hereby agreed between said parties that ownership of said mines shall be held on a basis of 60% to the party of the First Part." Now as a matter of fact, in referring to Gov't's Exhibit 83 and the \$40,000.00 that you speak of, Archbishop, I have here these

(Testimony of Archbishop Francis J. Beckman.)

checks, Govt's Exhibit 83, and I find a check dated February 11, 1939, the date of the execution of this agreement, for [75] \$1,000.00; check dated March 4th—these checks were all after the agreement?

A. Yes.

Q. March 4, 1939, \$503.00; March 4, 1939, \$10,000.00; March 4, 1939, \$2,006.00; March 5, 1939, \$7,500.00; March 20, 1939, \$3,000.00; April 18, nineteen—that is 1938. So that approximately I think just roughly here it figures around \$24,000.00 that was advanced after this agreement was entered into in which you became the controlling owner of these properties?

A. Yes.

Q. Now as I understand it from Govt's. Exhibit 87, you also issued some notes dated 1939?

A. Yes.

Q. Approximately how much in notes?

A. I think twenty thousand.

Q. Twenty Thousand dollars?

A. Yes.

Archbishop Beckman testified that he had received reports from his representative and agent, Monsignor O'Laughlin, from time to time; that Monsignor O'Laughlin was looking over the properties for the Archbishop; that Monsignor O'Laughlin was sent to the properties shortly after Suetter and the Archbishop had completed their original negotiations for financing the operation; that Monsignor O'Laughlin was appointed as the witness's agent and attorney in fact.

(Testimony of Archbishop Francis J. Beckman.)

Beckman testified that suit was filed in Josephine County, Oregon, on June 1, 1939; that the defendant Suetter was enjoined thereby from operating any of the properties; that on the 17th day of June, 1939, a settlement agreement was entered into whereby the defendant Suetter, returned to Archbishop Beckman the notes in the amount of \$171,250.00 and deeded all of the mining properties except the original Suetter (Josephine) Mine; that Beckman agreed to pay Suetter the sum of \$20,000.00 cash and to assume the claims of Bishop Rhode and Father Bubacz for any interest or any investment in the properties that they had made.

[76]

On re-direct examination the witness, Archbishop Beckman, testified that he had received the machinery and equipment from the defendant Suetter and that title was clear to all of the equipment so turned over to him.

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The U. S. thereupon called

MR. ROBERT H. STRONG

who testified that he knew the defendant, Phillip Suetter; that he was acquainted with the Norton Mines or Josephine Mines in Josephine County, Oregon; that he had taken an option on said mines for a group of Eastern clients; that he had prepared the factual survey, defendant's exhibit 20, for said clients; that he was not, and did not pur-

(Testimony of Robert H. Strong.)

port to be a mining engineer; that said survey did not purport to be an engineers report; that it did contain certain maps and assayers reports as to the values found on the property; that it was intended to be used by, and examined by persons conversant with mines and mining; that it was not intended to be used as a basis for the sale of the mines or stock therein by the general public; that the option he held on behalf of his, Strong's, clients had not been exercised; that Strong knew that Ralph T. Montag had an interest in the property.

[77]

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### I. R. PERRY

was produced as a witness for the United States and testified that he was traffic manager and accountant for the Medford-Crescent City Truck Lines; that he had been employed by the defendant, Phillip Suetter, part time in March of 1939 until December, 1939; that he was orginally employed to make an accounting to be submitted to Archbishop Beckman; that the accounting was never completed but that a preliminary trial balance was made "as of April 30, 1939"; that said trial balance covered the Suetter Placer Mines and Phillip Suetter.

The witness identified Government's Exhibit 104,

(Testimony of I. R. Perry.)

a copy of the trial balance, prepared for Mr. Suetter which reads as follows:

## EXHIBIT No. 104

	"Debits	Credits
First National Bank of Port- land, M. Branch.....	\$ 12,000.00	
First National Bank of Port- land, G. P. Branch.....	14.28	
Bank of America, Crescent City, Calif. .....	301.81	
First National Bank, Crown Point, Ind. .....		4,532.40
American Trust & Savings Bank, Dubuque, Iowa .....	5,000.00	
First National Bank, Chicago, Ill. .....	7,000.00	
The Commercial Bank, Crown Point, Ind. .....		15,474.84
Anna Suetter .....	2,250.00	
Phillip Suetter .....	40,955.65	
J. V. Burke .....	15,013.00*	
P. L. McLeod .....	6,649.81*	
Josephine Knighton .....	2,976.00*	
E. J. Bickford .....	6,526.93**	
Bill Merrith .....	100.00*	
F. J. Beekman .....	13,000.00*	
Geo. Sutherland .....	50.00*	
P. J. O'Laughlin .....	500.00*	
Machinery .....	107,142.71*	
Office Equipment .....	57.50*	
Cars and Trucks .....	7,565.86*	
Buildings and Camp Equip- ment .....	3,799.59*	
Mineral Claims .....	6,072.57*	
Development .....	1,898.90*	
Investment Account .....		281,636.90
Labor .....	26,007.66*	
Fuel for Power .....	5,498.49*	
Car and Truck Expense.....	3,368.54*	

(Testimony of I. R. Perry.)

	Debits	Credits
Groceries and Camp Supplies	4,172.91*	
Repairs and Mine Supplies..	5,526.33*	
Workman's Compensation In- surance .....	1,695.58*	
Social Security Taxes .....	1,375.07*	
Telephone .....	653.19*	
Legal Expenses .....	1,680.95*	
Interest Paid .....	1,735.63*	
Traveling Expenses .....	1,221.37*	
Commissions Paid .....	6,430.00*	
Mise. Expense Including In- surance .....	3,289.89*	
Royalties Paid .....	113.92*	
	<hr/>	<hr/>
	\$301,644.14	\$301,644.14

[78]

"The total expenditures marked by \* amount to \$234,122.40. All these items are supported by cancelled checks and most of them also by paid invoices. The item marked \*\*, which is included in this total, has a charge of even \$6,000.00 in it which is not supported in the records I have by a cancelled check but shows to have been paid by the bank and a memorandum with the bank statement that it is for the Bickford Property. This item is doubtful as there is also a disbursement shown by J. V. Burke to the extent of \$6,000.00 for the Bickford Property. Deducting the \$6,000.00 would leave \$228,122.40 properly supported by cancelled checks. No cash payments made by Suetter from cash drawn out of the banks has been credited to his account and charged to expense in these figures. These will in due

(Testimony of I. R. Perry.)

time be checked and credited to Mr. Suetter's account and charged to the proper expense account.

"It will be noted that five bank accounts show a balance still on hand in the banks and two show large overdrafts. These entries to these accounts were made from data furnished, deposits being taken from the bank statements themselves and credits being entered from cancelled checks available. No cancelled checks were furnished on either the Chicago or Dubuque Banks and no statement furnished on either of the Crown Point Banks, although some cancelled checks were found in the files and entered.

"All cancelled checks and bank statements through April 30th, 1939 are entered in the books, but a check of all invoices on hand will have to be made to determine what checks are supported by invoices, time cards, payroll records, etc., and also to eliminate certain hotel bills, etc., which were paid by check in order to determine what bills were paid in cash and the amount to be credited to the Suetter personal account and charged to the proper expense account.

"It would be well to determine from the complaint and suit filed by Archbishop Beckman and from Attorney Roberts the exact data necessary to go into court with as it is possible that some of the data we have may not be neces-

(Testimony of I. R. Perry.)

sary and also possible that supporting invoices may have to be obtained from various vendors to support the cancelled checks on hand.

"Certainly a thorough search should be made for all the supporting invoices covering expenditures on the St. John Bosco Mine, which were bound and taken to Crescent City about thirty days ago.

"The gross amount of the Notes signed by Archbishop Beckman in favor of Phillip Suetter should be furnished me and any data available to show the discount and commissions paid on notes disposed of and a list of the notes still on hand that have not been sold. These figures are necessary to determine the total amount of money to be accounted for. Also is there any money furnished direct through checks or cash by Beckman other than through the medium of notes?

I. R. PERRY.

August 1, 1941"

Perry testified that said trial balance was made from cancelled checks, original invoices, letters and other information given by the defendant, Suetter; that it was a correct summary of the material supplied.

The witness further testified upon direct examination as follows:

Mr. Dillard: Q. "Investment account \$281,636.90. Do you recall the item?"

(Testimony of I. R. Perry.)

A. "The two hundred eighty-one thousand and investment account is nothing more or less than the deposits which were charged to the [79] bank and credited to Mr. Suetter's investment account. You might say it is a balancing account for all your other figures, yes."

Q. "Did you say it came from deposits?"

A. "Yes. In other words, you, take, there was \$10,000.00 put in the bank, it would be charged to your bank account and it would be a credit to Mr. Suetter's investment account unless I had some other source, or knew, or knew the source it came from. I say some other source; say machinery or something."

Q. "May I ask this: Supposing Mr. Perry—I am just seeing if I can understand your balance and the way you made it up—supposing I had put in \$50,000.00 in the Suetter Placer Mines in 1938, would that \$50,000.00 be in this \$281,000.00 figure that you have got there?"

A. "It would unless the record showed directly that it had come from you, but if the fifty thousand had gone in there and I didn't know definitely it came from you, it would go to Mr. Suetter's investment account. If I knew definitely it came from you, it would be shown as a liability of Suetter's."

Q. "I see. That is all I wanted to get at. I note a credit item of \$15,474.84 up here under credits; that is under the name of the Commer-

(Testimony of I. R. Perry.)

cial Bank, Crown Point, Indiana. What was that item?"

A. "Well that—I had that amount of cancelled checks on that bank. I was never able to find the bank statements or any indication there had been that much money put in the bank. Apparently there had been, though, because they had honored the checks."

Q. "Now then, you have got an item here, Anna Suetter \$2,250.00 under debits. What did that mean?"

A. "That is the checks Mr. Suetter had written out to Mrs. Suetter. The total of those varies at various times."

Q. "You have got an item here Phillip Suetter, \$40,955.65." [80]

A. "That is the total of checks written out to cash which were not identified as to any particular expense account, or written out to Mr. Suetter himself; in other words personal withdrawals from the bank."

Q. "You have an item here of machinery \$107,142.71, under the column debits. What does that mean?"

A. "That is the total amount that had been spent for machinery."

Q. "Did you take into consideration or have any information about, at the time you made this trial balance, money put into the venture by Ralph Montag of Portland, Oregon?"

A. "Well, I knew from Mr. Suetter's con-

(Testimony of I. R. Perry.)

versation that Mr. Montag put in some money; how much or anything I don't have any idea, and it wasn't taken into specific consideration in making the accounting."

Q. "Is there any item here covering the Montag money?"

A. "Not that I can identify."

Q. "Did you have an item in this account of cash received for the sale of a gold washer or gold dredge during the month of April, 1939?"

A. "No, I don't think that that was taken into account there. At least, it wasn't directly as an item to be identified anyway."

On cross-examination the witness testified as follows:

Mr. Prendergast: Q. "Now, counsel has asked you in regard 'labor, \$26007.66.' Over what period of time does that cover, Mr. Perry, do you know?"

A. "Frankly, I just couldn't tell you exactly what period of time that does cover."

Q. "That is entered as a debit?"

A. "I think it was over a period of, starting in early 1937, I believe, up to that date. Now, I would not be certain."

Q. "1937 to 1939?"

A. "Yes, approximately that, I would say."

Q. "That is on the Suetter Placer Mine?"

A. "Well, that covers the Suetter Placer Mines, which include all [81] operations. It

(Testimony of I. R. Perry.)

included the Josephine, a portion of the California mine, and I think there is possibly some of the St. John Bosco in it."

At the close of the case for the United States, defendant, through his counsel, moved the Court for an order dismissing the cause against the defendant on the ground and for the reason that the United States had failed to prove any fraudulent scheme and had failed to sustain its case, which motion was then and there denied by the Court, to which ruling the defendant, by his counsel, then and there excepted.

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The defendant,

PHILLIP SUETTER,

was thereupon called as a witness in his own behalf and testified on direct examination that he had sent the letters and had used the other means of interstate communication as charged in the indictment; that he had met the persons charged in the indictment as having been defrauded substantially as proved by the United States; and denied any scheme, artifice or intent to defraud in any of the transactions.

He further testified that prior to 1927 he was engaged in the business of trading horses and live-stock; that he became interested in mining in 1927; that he had lost everything in the depression and had gone through bankruptcy in 1933 following which he went to Southern Oregon; that he had

(Testimony of Phillip Suetter.)

acquired an option on the Josephine properties in June, 1934.

The defendant, Suetter further identified Defendant's Exhibit 105, a cost sheet on the "Mt. Reubens" or "Wheeler" mine as follows:

"COST OF MT. RUEBEN MINE AND EQUIPMENT"

"7 Claims on top of Mt.....	\$ 25,000.00
"2 Claims on Rueben Creek tunnell site, water rights etc. ....	\$ 11,000.00
"Prospecting & engineering, surveying, assay- ing etc. ....	\$ 7,000.00
"Road building from Leland to mine.....	\$ 6,000.00
"Work on California tunnel and Reed tunnel.....	\$ 1,200.00
"Main tunnel Equipment, rails, ties, tanks, pipes, etc. ....	\$ 20,000.00
"Power plant from ditch to tunnel, including all mach. ....	\$ 25,000.00
"Camp buildlings and equipment.....	\$ 45,000.00
"Saw Mill. All gone by Turbine.....	\$ 4,000.00
"Small tool and Implements .....	\$ 1,500.00
"Building Flumes on Ditch. Repairing, Level- ing & Cleaning.....	\$ 8,500.00
"Main Water flume, Intake & Penstock. Es- timated cost .....	\$ 75,000.00
"Main tunnel construction & drifts. About 10,000 ft. ....	\$225,000.00
Total	\$443,700.00

[82]

Began work on road from Leland to mine in 1919. Closed down all work when Engineer died in 1929."

(Testimony of Phillip Suetter.)

EXHIBIT 159

Kerby, Oregon

November 7, 1938

"Assay made by O. E. Walling on 1# in lb. of Black Sand. Gold 1500 grain at \$.16 per grain \$90.00 per ton [82-A] Platinum and osmeridium group undetermined.

Signed by O. E. WALLING,  
Kerby, Oregon.

Monday November 7, 1938."

The defendant further identified Defendant's Exhibit 108, a letter dated April 22, 1939, from Archbishop Francis J. Beckman to the defendant, Suetter, as follows:

"Catholic Students Mission Crusade  
Crusade Castle  
Shattuc Ave. Linwood  
Cincinnati, Ohio

My dear Mr. Suetter:

"Your letter was forwarded to me here. I am sorry if I hurt you because I did not intend to. But you can understand that I am getting more and more anxious. Always giving out money & never getting returns. I know it takes time—I have trusted you and do trust you. With everything, but I must have security in writing. In case anything happens to you or to me—the diocese must be secured. I must do this in conscience—I must make my report to Rome this year make it to the Pope the Vicar of

(Testimony of Phillip Suetter.)

Christ—same as making it to our Lord Jesus Christ himself. It must be honest, exact & safeguard His Church. If anything should happen to me, and I left things as they are now without written security it would be a scandal. If anything happened to you, and I would not have the 60-40 contract on all there would be a worse scandal. That is why I must insist on all this in writing.

“If I could be sure you would live to finish all—I wouldn’t worry, but you can’t be sure & the Church must be secured.

“Besides whatever you got you got with my money. How could you think of keeping the Ajax & Slate property out of the contract when it was my money got it all? Then too you promised me for two years to give an account of every cent I gave you—every note and every cent spent & what for it was spent. You have never done that. Don’t think I would ever interfere with you. All I want is security on paper. You always say you care for very little for yourself yet you want more than half & keep controll—where all was gotten with my money. So you see I must act in conscience. You can trust Father Kessler absolutely. He raised most of the money for you, he too in conscience must safeguard the Arch Diocese. So please understand. I know you would do anything for me. I know you would not harm

(Testimony of Phillip Suetter.)

me—I trust you. I loved you from the beginning & always will, but I must secure the Church.

“So please sign up for Father Kessler. I wired him to stay till he got everything fixed up, so I and the diocese, and Church are secure.

“I sent you some Palms—don’t worry! Don’t bother [83] about anybody else. You & I are together—but I want to be made sure on paper. Now God bless and keep you! Write again. Tell me prospects.

“Can you send me some money to meet interest and debts—? I can make it good again later! I need it now. Pray for me as I do for you & under & with God do as I said & we can expect for blessing.

“Regards to all—yours very sincerely

FRANCIS BECKMAN

Archbishop, Dubuque

April 22, 1939”

On cross-examination the defendant, Phillip Suetter, testified that he had met Ed Hogan in Grants Pass, Oregon; that Hogan had informed him that he, Hogan, could raise the necessary money to put a dredge on the Josephine Mines, or Norton property from connections he had in the East; that Suetter agreed to allow Hogan 20% commission on the money so raised and a 5% interest in the mine if he were successful; that he, Suetter, supplied Hogan with an automobile and expense money; that

(Testimony of Phillip Suetter.)

he did not hear from Hogan for two or three months after Hogan had gone East; that he did not know of Hogan's exact whereabouts but that the latter received his mail general delivery.

Suetter further testified that seven or eight months after Hogan had left Grants Pass Suetter went to Chicago to locate him; that it was 30 days before he contacted Hogan; that Suetter learned that Hogan had misrepresented the mines to Father Bubacz and that he gave Bubacz some "Units" in the mine upon learning of the misrepresentations so made; that his purpose in going East was to retake the car and see that Hogan did not put over any deal that Suetter did not approve of.

After identification by the witness, Suetter, the United States offered in evidence Government's Exhibits 112 and 113, as follows:

"The Stephens

Chicago

Oct. 22, 1936

Ralph Montag

Dear Friend

"When arriving back to Chicago your letter of the 19th here. [84] I mailed your letter special Sunday the 11th got check on 10th Saturday afternoon. Hotel would not cash it limit is \$250.00 Sunday then Monday holiday then Tuesday morning cancelled trip that is that. Mr. Gilmore went to Oklahoma on 10th Satur-

(Testimony of Phillip Suetter.)

day 1:30. I got wire he wanted blueprint of machine. He got that fixed my wife she sent map. This is separate deal from Hogan deal intirely because I wrote you special Sunday 11th and explained first come first served. That is that. Now then Monday 19th I told Hogan what had to be done. I took the car went to Cincinnati and Covington to raise 2 or 3 thousand for expense money to put these deals over but my man had left for Florida so I wired you for money for \$250.00 then I changed my mind and called Hogan up at Chicago. He said he talked to Bishop but haven't seen him yet to find just what was said but I am positive that deal is made. This time I am not bound to any one. I called Gilmore at Okla. City. He told me what had took place so I went to Cincinnati which is just acrossed river but I haven't been there for thirty years. I put in biggest part of day looking up few people to get this said expense money I mean just borrow it. I made up my mind to long so instead of driving to Iowa after Hogan called I came hear to Chicago Wednesday nite and found your letter and wire from Mr. Gilmore. Now Ralph I can't understand why you did not get letter. I am investigating it further. You got nothing to worry about but sure is hard to put over half million dollar deal on shoc string. I have money you sent me I mailed back to Camp in order to keep things going. If you would of got that

(Testimony of Phillip Suetter.)

letter would told all what I am doing. I sure am not kidding myself on this either. As soon as Gilmore comes back I will wire you and soon I see Hogan this morning I will find what took place on phone. I will wire you this afternoon. So I wired you just as soon as I read your letter and Gilmore's wire soon as I see them I will give you details. 5 ton truck would not hold mining money that is available if I had that property in shape to take just people ride in plane take them out if I had that like I wanted before I left and this dredge will well do work. Link belt are taking out \$12,500.00 twelve thousand and five hundred a day in Virginia City with same outfit second time property been worked and further I am not selling any stock it's on unit plan. Again will say there is nothing to worry about, and there be no strings on any deal. Hogan deal all moneys must clear Portland Banks, and I want to place order for machine before leaving Chicago and buy Keystone drill that is first thing. Don't fail on that two fifty. In any time you want to know anything wire or write Stevens.

Yours Truly,  
**PHILLIP SUETTER**

"With help of God I hope you understand I want you to understand I am not putting on any parties further what you sent me after I get few dollars to camp nothing left."

(Testimony of Phillip Suetter.)

## EXHIBIT 113

“The Stephens

Chicago

Sept. 27, 1936 [85]

“Mr. R. T. Montag  
2011 North Columbia Blvd.  
Portland, Oregon

Dear Friend:

“I will try and answer your letter, which seems to be a very hard thing for me to do. I thought I had made everything clear to you.

“For your convenience, I am quoting your second paragraph of your letter of Sept. 25th, and my answer will appear directly below it:

“You state that you have a deal on contract signed by the Bishop but you did not tell me the terms of this agreement. Please write me airmail at once telling me just what the deal is. When is he to make his first payment and how much it is to be, also what is the total amount that he is to raise and what is he to get for it. How much is the total money to be raised by him and yourself and Hogan and how much is the money to be applied:

“My answer to the above paragraph is:

There is no contract signed by the Bishop, but there is a letter written to E.E.H. signed by the Bishop. There is no agreement—there is no specified time when the first payment is

(Testimony of Phillip Suetter.)

to be made. The amount may be \$25,000.00 and it may be \$100,000.00. The total amount is \$329,000.00 for 49% of the property's output. The money is to be applied to equip the mine, pay Ralph Montag and Phillip Suetter for what we have put in it. Then operate with the equipment as per blue print, which I put in all day Thursday and Friday discussing about motors with the Link Belt and Fairbanks Morse. I have a man who understands motors. All moneys clears through the Bank of Portland.

"Your next paragraph reads:

"In the first part of this letter you state that he has turned in a large amount of securities to be sold also he has several hundred thousand dollars of oil-paintings which are being sold. Who did he turn these securities over to be sold and if the oil-paintings are sold who has the money. My reason for asking these questions are that in the last part of your letter you state that you do not like to ask him for money and in the first part you state that he has turned in securities and sold oil paintings.

"My answer to the above paragraph is:

"I did not state that he had turned in a large amount of securities to anybody. I told you that they were selling some bonds as per his letter, and that he had a large amount of oil paintings which could be sold. I did not

(Testimony of Phillip Suetter.)

state that they are being sold. His letter said that he could sell them. I shouldn't think you would ask a question of that kind that an Archbishop would turn over these kind of securities to anyone to sell. How would you expect anybody to get the money but the Archbishop. Yes, I said I [86] don't want to ask for any money, or I don't want E.H. to ask for any money, because all moneys have to be cleared through the Bank of Portland as I stated in the above paragraph. Why should I ask you for any money if I was drawing any money here? What I want to get over to you is that all money clears through the Bank of Portland.

"Your fourth paragraph reads:

"I think it well that I should know the details of the deal not because of my distrust but because of my investment and interest in this matter. I was pleased to learn from your letter that a large part of my investment will be sent to me from the first money you receive and am naturally anxious to know when I will receive it to take care of my own obligations here which are pressing."

"In answer to this I will state:

"I want you to know the details. There is no part of your investment which will be sent to you, but will be turned over to you by me in Portland. Again I will say why should I be writing to you for expense money if I did not

(Testimony of Phillip Suetter.)

need it, or if I was drawing any money here?

"Now this is strictly on a unit basis, but since this flurry came up that I mailed you the paper three Bishops and one or two of the other want to take the whole proposition, and it looks very much that they may turn all of said moneys, or at least \$100,000.00 and since this has come up one of these men has gone to Canada via airplane and flew back who has a interest in said Canada property and he is the main spring in our deal—so don't let anything else worry you. This is a clean-cut deal without any strings to it whatever.

"This is about as plain as I can get it to you, and I should have \$1000.00 or \$1,500.00 because I don't get a cent from any one in this part of the country, as I explained above, and don't delay matters above everything else that you do. The quicker you get this over to me the harder I can push. I want you to know that I had to step on E. H. He got "Nigger rich" on me and I had to tell him how it's got to be done, but you leave that to me.

"Further referring to your second paragraph: When said money is all paid, Hogan is to have an interest equal with us in this property. After you receive yours, I mine, and the rest equal.

Sincerely yours,

PHILLIP SUETTER

Don't delay"

(Testimony of Phillip Suetter.)

The witness also testified that he had sought an interview with Archbishop Beckman with a view of interesting him in the mines; that he had several parties interested in financing the mine; that the reference to the "half million dollar deal" contained in Government's Exhibit 112 referred to a deal Hogan had with [87] the Link-Belt Company and a Bishop Gallagher in Detroit; that Hogan had never informed him of any deal with Archbishop Beckman but that said information had come from Father Bubaez.

The United States thereupon, after identification by the witness, offered Government's Exhibit 114, a letter as follows:

"The Stephens  
Chicago

Oct. 25, 1936

"Say don't think this any pleasure for me back here anything I enjoy here only gets this deal over

R. T. Montag  
2011 N. Columbia Blvd.

Dear Friend:

"Sunday 2 p.m. just came back from Link Belt talking to General Manager and desiding what motor that is type desired. We put in the dredge allso shovel so I decided that you say you must know what money was collected. None. If there had been I would have written or wired you.

(Testimony of Phillip Suetter.)

"And you say you haven't any more information than you had three weeks ago. They sent some paintings to PA some to Florida was last report that was when I got back I instructed Hogan we don't want to take it in little dabs. I received your \$150.00 and then I borrowed \$1,000.00 and I did not give any *unites* or security of any kind. Whatever you send me you can just gamble I am not putting on any party. Send me five hundred if I take on just one that may be any minute or day. I will not have spent it foolish. Did not have to friend that I hadn't seen in 35 years just met him *hear* in hotel told him what I am doing purchases machinery and he heard me growling about you just sending me \$150.00. He just said Phil here is thousand if it will help so I sent Camp two hundred fifty paid \$150.00 I borrowed send Anderson \$110.00. Gilmore returned from Oklahoma. I gave him fifty to go down Indiana on a deal with car. Again I am going to press this on your mind. I am not going to play any penny anti game with anyone back here and told Hogan so I don't have to with the connections I have made since being here. Had you helped me to equip that property in small way before I left I would have to get 5 ton truck to haul the money out that is available for mineing. Back here I have made connections with that kind of people regardless of deal Hogan has,

(Testimony of Phillip Suetter.)

but now I have just got to set out one that will put \$25 thousand up without going out and I can do that in next few days with God's help and go to Camp fix things up in good shape then wire Gilmore or Hogan to bring them or come back myself. Now for your information last week this same type dredge in fact same model took out \$45,000.00 last week labor expense \$1,998. General *Mangr* of Link Belt just came back from there and it is property that has been hidraulic never could make it pay. I have had two men wanted to go out and they would pay for machinery and put [88] up expense for 4 Percent. Again I will say that you have got nothing to worry about. In your letter of 19th you say you are on the spot. I don't know what kind of a spot you are referring to but I know this much if you knew what money that is available well believe me like you should you are on spot to make lot of money. There is another thing I want to tell you there is man right here in hotel that I can sell 25,000 unit if porperty was like I wanted it before I left tires on those trucks and one screen up and pump hooked up just to show them in a hurry gold is there. I know it is there better than anyone so I got to do next best thing that is to wait

(Testimony of Phillip Suetter.)

out one and get enough to do it so I can place and signed orders for machinery.

Yours truly,

PHILLIP SUETTER

"Ralph I was just ready to put letter in the envelope my phone rang man that I met at Link Belt plant wants to put in \$30,000 and go out but Ralph I am not going to make any blunders. I came back here to put this over and I am going to do it with God's help I am going to get at least enough to pay for plant and complete drill, tractor in fact everything we need *weather* you help me or not I am not selling any stock will not entertain that kind of proposition at all. Nobody that wants control can deal with me for I got to guard connection may take little longer but I will get the job done. Don't worry. So I think this is plain. If I had expense money so man would not have to stew and fret his mind work better. So send me check."

Referring to Government's Exhibit 114 the witness, Suetter, testified that the "connections" referred to therein was the deal he had with Phillips of the Link-Belt Company; that he was trying to interest capital in the venture; that he severed connections with Hogan in October or November of 1936;

In response to questions regarding his assets at the time of the purchase of the Norton Mines

(Testimony of Phillip Suetter.)

the defendant testified that Ralph T. Montag had put up a considerable part of the money; that he had borrowed from others for part of the financing; that he had made some recovery in gold to meet the expenses of operation; that at the time he Suetter, went east he and Ralph Montag had invested between eighty and ninety thousand dollars in the mines; that when he had first gone to Southern Oregon Suetter had \$6,000.00 of his own money.

Referring to Government's Exhibit 79, the witness, on cross-examination, testified that the statement contained in said document that "I, Phillip Suetter,—own clear title to the following mining premises in Josephine County—" because title in fact was in his name; that Ralph Montag did not [89] want his name listed in connection with said mine; that the money obtained from Archbishop Beckman had gone to equip the property with proper machinery and the purchase and financing of the St. John Boscoe Mine, the Wheeler or Mt. Ruebens property, and the other properties.

In response to certain questions the witness testified as follows:

Mr. Dillard, Q. "Now, Mr. Suetter, there has been a good deal said incidentally about settlement with Archbishop Beckman, settlement with Bishop Rhode. As a matter of fact, your settlement with Bishop Rhode was a long time after your settlement with Archbishop Beckman, wasn't it?"

(Testimony of Phillip Suetter.)

A. "Well, sometime, yes."

Q. "A year or more?"

A. "Well, when I settled with Archbishop Beckman he agreed to settle with Bishop Rhode."

Q. "Yes?"

A. "Before I signed the contract—and others."

Q. "Now, wait a minute. When was the settlement with Rhode, that is, the business settlement?" A. "In June, 1939."

Q. "Now, you are talking about the settlement with Beckman, aren't you?"

A. "Well, they agreed to settle with Rhode and others, to pay all bills, before I signed it."

Q. "As a matter of fact, it was a year or so later that Bishop Rhode sued you, wasn't it?"

A. "Yes. Well, no, I don't—well, it might have been a year; I don't know."

Q. "Yes. And after that you, by some means, settled that civil suit with him, didn't you?"

A. "Archbishop Beckman settled it. They settled it among themselves." [90]

Q. "Anyway it was settled?"

A. "Yes."

Q. "And, as a matter of fact, after you had some kind of a lawsuit and settlement with Beckman in '39, you still sold to Bishop Rhode

(Testimony of Phillip Suetter.)

some units in the Suetter Placer mine, didn't you?" A. "I did not."

Q. "I want to direct your attention to Government's Exhibit 68, letter dated Green Bay, Wisconsin, July 27, 1939, and addressed to Mr. Phillip Suetter, Grants Pass, Oregon, among other things saying, 'Kindly give yourself the trouble to send me my certificate for three units of the Suetter Placer Mines, two paid by the present check and one by the check of May 8th. last.' "

A. "Well, he agreed on that before we had —before ever I had signed the contract."

Q. "Yes."

A. "On the Suetter Placer Mine."

Q. "Yes. And you took his money and sent the additional units after you took his money, didn't you?"

A. "I took them to Chicago."

Q. "You what?"

A. "I didn't mail them. I took them to Chicago and tried to collect my money on my contract from Archbishop Beckman."

Q. "Well, as a matter of fact, you did sell him the units and take his money for them, didn't you?"

A. "We made the deal before our settlement."

Q. "Answer that. Did you take his money for them after July of 1939?"

(Testimony of Phillip Suetter.)

A. "Well, he sent the check, I suppose, after that; yes."

Q. "You endorsed it Phillip Suetter?"

A. "Yes." [91]

Q. "And cashed it?" A. "Yes."

Q. "On the 9th day of August?"

A. "Yes."

Q. "1939, didn't you?"

A. "Yes."

Q. "Later in that deposition of yours from which I read to the jury in the course of this trial, you said you considered that all of the mines you were mentioning, all of those you mentioned, the Bosco and others, were Suetter Placer Mines?"

A. "Yes, and operated under the same——"

Q. "What?"

A. "The same financial deal, yes."

Q. "Yes. Did you inform Bishop Rhode that one of the principal investors, Archbishop Beckman, had withdrawn, or thought to withdraw, and asked for an accounting of this fund?"

A. "Did I—what was the question?"

Q. "Well, did you inform Bishop Rhode that one of the principal investors, that is, Beckman, had sought to withdraw and asked for an accounting of his funds?"

A. "Yes. I wrote and told him that Archbishop Beckman agreed to settle and give him —take him in with him."

(Testimony of Phillip Suetter.)

Q. "Now, let's see just for a minute about the situation there in 1939 regarding the so-called Suetter Placer Mines. You told us the other day, I think, on direct examination, that in the end, after your deal with Beckman, after his lawsuit, you ended up with just the Josephine Mines; am I right about that?"

A. "Yes."

Q. "And you transferred some interest in the Baer Mine, St. John [92] Boscoe, and many others we have mentioned here, to the Archbishop?"

A. "That is what they wanted."

Q. "You did that?" A. "Yes."

Q. "And where were you operating in July of 1939? What properties were you operating?"

A. "I wasn't operating any at the time, but what I had left was the Josephine Mines. They was the Norton Mines, which they didn't want. They agreed that—that was our settlement."

"Q. You were still taking money from Bishop Rhode on the Suetter Placer Mines, however, weren't you, at that time?"

A. "He agreed before we settled."

The defendant further testified on cross examination, that he had received certain funds from Archbishop Beckman shortly before the bringing and settlement of their civil suit; that he had demanded \$30,000.00 from Archbishop Beckman in his letter of May 29, 1939 (Government's Exhibit

(Testimony of Phillip Suetter.)

89) to finish out the property; that he did not account to the Archbishop for the money received in the sale of the dredge from the St. John Boscoe Mine but spent the money in the operation of the other properties; that Monsignor O'Laughlin was present at the time of said sale.

On further cross-examination the defendant Suetter admitted that the dredge or gold-washing plant which was purchased from Electric Steel Foundry was placed on his mining property in California and was not sent to the Josephine mine. At one point in Phillip Suetter's testimony the Court asked the following question of Suetter: "All these people in the East with whom you had dealt had dealt on the basis of the Josephine Mine and not on the basis of any other mine?", to which question Suetter answered as follows: "Well, your Honor, I know, but then their own representatives was in favor of the Wheeler and that is a good property today. If they had just let me alone and went on [93] developing it—

The Court: You mean, by 'their representatives' you mean Bishop Beckman's representative, Father O'Laughlin? A. Yes.

The Court: Father Rhode didn't have any representatives here?

A. No, no, Bishop Rhode didn't."

On further cross-examination Suetter admitted the sale of the gold-washing plant and his failure to account to Bishop Rhode for the proceeds received in the sale.

(Testimony of Phillip Suetter.)

Suetter also testified that after he had acquired the St. John Bosco Mine in California he found that the man from whom he had purchased it, E. J. Bickford, had misrepresented the title.

At the conclusion of the examination of the defendant, Phillip Suetter, by his own counsel and counsel for the Government, he gave the following testimony in answer to questions by the jurors and by the Court:

"Juror Elizabeth V. Denner: I believe that one of the witnesses has testified they put up money to buy machinery for the Josephine mine, and then he testified that he was down in that mine and to this day there is no machinery on there but a second hand tractor. What become of the money?

A. Well, that was after we settled. That was up to me. That was turned to me in the settlement, that Josephine Mine, which is my own now.

Juror Denner: But originally did you put any machinery on the mine before you acquired the new ones? A. Which mine?

The Court: The Josephine mines. Yes.

A. Yes.

Juror Denner: Then when did you move the equipment from the Josephine Mine?

A. Well we removed some, a good part of the machinery, when I went down to the Wheeler mine.

(Testimony of Phillip Suetter.)

The Court: I see. Does that answer your question?

Juror Denner: Well, to a certain extent. He said to this day there wasn't any machinery on there. [93A]

The Court: I believe that was Mr. Montag. He said he put up money to buy machinery.

Juror Denner: That machinery was removed then?

A. Oh, that machinery is still there, the majority of it is, only some I took down to the Wheeler.

The Court: In other words, the machinery you bought with Montag's money was still at the Josephine Mine?

A. Yes, sir. There is a Marion shovel up there, and the pipe, hydraulic pipe, and the giant is there, all of it.

The Court: And the only machinery you moved is the machinery you bought subsequently with the money you received from the Bishop and the others? A. Yes.

The Court: Does that answer your question?

Juror Denner: Yes.

The Court: You had one.

Juror B. H. Stewart: Yes. Do you have any idea of what the total amount of cleanup was from these mines during this period of time?

A. No, I have not offhand. I have not off hand, no.

(Testimony of Phillip Suetter.)

Juror Alice M. Stewart: Did you spend any of the money that Bishop Rhode sent you on any of the other mines outside of the Josephine Mine?

A. Well, not the last two thousand, I didn't. I bought a tractor from the Reed Tractor people at Klamath Falls and paid fifteen hundred dollars on it and afterwards—and then I built several, what you call a rubble elevator, and I had no more money to go ahead and I let the tractor go back to the Reed Tractor people.

Juror Stewart: He was only interested in the Josephine Mine, wasn't he?

A. That is all.

Juror Stewart: Well then, you say you did spend some of the money he sent you on some of the other mines other than the Josephine property?

A. Well, that was all done—they knew about that.

Juror Stewart: With Bishop Rhode's consent? [93B]

A. Yes, that is it.

Juror Stewart: But still didn't you testify, or didn't he write you that he wasn't interested in any mines only the Josephine, and he didn't want his money spent any place only on the Josephine mine?

A. That was after we had the settlement.

The Court: That was after the money had

(Testimony of Phillip Suetter.)

all been spent, except the last two thousand;  
isn't that correct?

A. Yes, that is correct.

The case was thereupon submitted to the jury under proper instructions by the Court and a verdict returned by said jury finding the defendant "Not Guilty" upon Counts One, Two and Five of the Indictment, and "Guilty" upon Counts Three, Four, Six, and Seven of the Indictment, and recommended leniency for the defendant.

Whereupon counsel for the defendant moved the Court for an order granting a New Trial, based upon the following grounds and for the following reasons:

### I.

"The verdict of the jury in finding the defendant Guilty on Counts Three, Four, Six, and Seven of the indictment, said Counts charging the defendant with having violated Section 77 (a) (2) of title 15 U.S.C.A. (Securities Act) is inconsistent with their finding the defendant "Not Guilty" of having violated Section 338 of Title 18, U.S.C.A. (Mail Fraud Act).

### II.

"The Court erred in admitting the testimony and exhibits offered by the United States, over the objection of the defendant, without compelling the United States to designate or elect as to which count or counts in the indictment such evidence was directed." [94]

Thereafter and on the 12th day of October, 1942, the Court heard the motion of the defendant and the arguments of counsel in support of their "Motion for a New Trial" and the Court then and there reserved its ruling on said motion.

And thereafter, and on the 19th day of October, 1942, the Court made its decision upon said "Motion for a New Trial," as follows:

"The first point that is made in the motion for a new trial is that the defendant was prejudiced by the fact that the Court declined at various stage of the proceedings when requested by the attorney for the defendant, to limit the evidence to particular counts. Counsel have referred to one case in which the Court merely stated that—the Jarvis case—in which the Court merely stated that the Court was right in not limiting the particular testimony as to each count as there had been no request that be done. I do not take that intimation to be that in a case of this character where the underlying facts are the same and where you are charging in eight counts a scheme to defraud by the use of the mail and you are charging in five counts the use of the mail in the sale of a security in conjunction with a scheme to defraud, that the Court is required to indicate as to each piece of testimony the count to which it relates. I think now, and I thought at the time of trial, that the government is entitled in a case like this to have all the evidence go in and leave the application of the various counts to the jury, subject, of course,

to the Court's instructions. I think the instructions of the Court were very elaborate. You gentlemen paid me the compliment of not offering any objections to the instructions as given. As you are aware, they were chiefly my own product, although I incorporated in three or four instances suggestions that had been made on each side. So I must take that as indicating the belief of the counsel for both sides that the charge of the Court to the jury placed before the Court the proper principles of law relating to the offense.

"Having had a good deal of experience in this line of work and with cases of this character in a district where mail fraud prosecutions are more frequent than they are in this part of the country, I took particular pain to instruct the jury specifically as to each of the offenses even at the risk of repeating some instructions which were applicable to both, so I gave a complete set of instructions relating to the offense of violation of Section 77E of Title 15 of the act commonly known as the Security Act of 1933. So I believe the Court's instructions were sufficient to leave to them the application of the evidence to the counts to which they relate.

"The one common element there was in both offenses, which sometimes doesn't exist, namely, the existence of a scheme to defraud. That element was necessary to prove both offenses. In the first case in dealing with the violation of

the postal law, devising a scheme to defraud by the use of the mail, the elements of the offense are the existence of a scheme intended to defraud and the use of the mail. In the second offense we had the sale of a security, and the existence of a scheme to defraud in conjunction with the sale and use of the mail. So the two common elements of [95] the two offenses were the use of the mail and the device or scheme to defraud.

"As to the securities counts, and that was also an added element, that they should be in the sale—that these facts should occur in the sale of a security or attempted sale of a security, which, of course, was not necessary so far as the first, the mail fraud count, was concerned. If the security counts had been drawn under a different section, such as for instance, the section—I misquoted; that Section I quoted was wrong; it is 77A. 77E is the one I am referring to. If the securities counts had been drawn under a different section such as, for instance, Section 77 E of Title 15, which relates to failure merely to register, it might well have been what we would have had to omit strictly the testimony, because if there had been merely a failure to register a security we would merely have had a sale of an unregistered security through the mail and the element of fraud would not have entered into the matter at all. If not, there may be a violation of the Securi-

ties Act through sale or attempted sale of a security by the use of the mail, a security which has not been registered, under the act.

"But I say, in a case of this character where the element of fraud enters into both groups of counts, a law that would require strict application of each piece of evidence to each count or require the government to select, would work to the prejudice of the government.

"In going over the transcript I found—I mean the portions I had because I only had the portions of the testimony of Rhode and the testimony of Beckman; as a matter of fact, two of the most important witnesses of the Government; the only witness, really, in whose testimony there is any element of any fraudulent representations because neither Father Bubacz's testimony nor Mr. Montag's testimony or Mr. Phillips' testimony would contain any element of fraud, and if that had been all that the government had to offer I doubt very much if I should have permitted the case to go to the jury, because every one of those men seemed sold on the idea, and Father Bubacz actually stated he made no—no representations were made by Mr. Suetter and that Suetter merely made good the representations made by Mr. Hogan. As to Mr. Montag and as to Mr. Phillips they both testified they were still sold on the idea and still believed the defendant actually believed that he had a good venture and were willing to trust him even at that time.

"But in going over this testimony I noticed at various states that when that petition was made the Court always asked the Counsel whether the matter was offered as to all counts, as to whether the matter tended to prove the scheme as to all counts, and in most instances, with very few exceptions, that was the answer. So I think that that point is not, as I conceive the law, well taken.

The second point that is made arises from what is claimed to be a contradiction of the verdict of the jury. The contradiction arises from the fact that the defendant was found not guilty on the two counts of mail fraud, Count One and Two, also found not guilty on the Count Five, on the securities count, which was the telegram sent to Bishop Rhode (Father Bubacz). [96]

"There is no question that, technically speaking, the Courts have been very charitable, over the strong objections of some very fine judges, in trying to overlook inconsistencies and contradictions in the verdict of juries. In our circuit we have had quite a number of cases. We have had Macklin V. United States 79 Fed. 2nd, 756, Long V. United States 90 Fed. 2d 482; Coplin V. United States 88 Fed. 2d 652; Mangeri V. United States 80 Fed. 2d 199. And strong cases from other circuit judges, among the more recent ones Freeman V. United States 96 Fed. 2d 13; Graham V. United States, perhaps the latest on subject 120 Fed. 2d 543. Of

course, we have had the famous decision of the Supreme Court in Dunn V. United States 248 U. S. 390.

"In that case the Court used this language; the opinion was written by Mr. Justice Holmes —the portion of the opinion I want to read is 393; that was a liquor violation and there were counts of maintaining a nuisance and counts of sale, and the defendant was acquitted on the counts which charged him with the unlawful possession and unlawful sale of liquor but was found guilty of maintaining a common nuisance, and the argument was he could not be maintaining a common nuisance if he hadn't been guilty of possessing or selling liquor on the place, because the only basis for the contention it was a nuisance was the illegal possession and sale of liquor. The Court said "Consistency in the verdict is not necessary. Each count in an indictment is regarded as if it was a separate indictment." Citing cases. "If a separate indictment had been presented against the defendant for possession and for the maintenance of a nuisance, and had been separately tried, the same evidence being offered in support of each, an acquittal on one could not be pleaded res adjudicata on the other. Where the offenses are separately charged in the counts of a single indictment the same rule must hold. As it was said in Steckler V. U. S., 7 Fed. 2d, 59 at page 60, 'The most that can be said in

such cases is that the verdict shows that either in the acquittal or in the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt. We interpret the acquittal as more than their assumption of a power which they had no right to exercise and to which they were disposed through unity.'

"In the Mangeri case, which was one of our cases, the opinion was written by Judge Garrecht and concurred in by Judge Haney and Senior Circuit Judge Wilbur—no, I beg pardon; there was a dissent by Judge Wilbur; the language there used has been cited quite often by the Court in later cases. I am citing from page 201; "It is also contended that the verdict of acquittal as to some of the counts is inconsistent with the verdict of guilty on the conspiracy count. This court has said in Macklin V. U. S. 97 Fed. 2d 756: 'The verdicts are not inconsistent, but had they been so, that fact, standing alone, would not render the verdict of guilty under the first count invalid. This Court said, in Bilboa et al V. U. S. 297 Fed. 125: "It was the duty of the jury to return a verdict upon each count of the indictment, and the fact that it found the defendants not guilty on one count does not render conviction in the other invalid." And the second Circuit has said in Selden V. U. S. 16 Fed. 2d 197-198: "We have held that when a jury convicts upon one count and acquits [97] upon another the conviction

will stand, though there is no rational way to reconcile the two conflicting conclusions" . . ."

"In the Coplin V. U. S., Judge Garrecht again writing the opinion, reviewing the decision of Judge Bowen, Western District of Washington, again refers to the Macklin case and said: "Verdicts on various Counts," page 661, "of the indictment need not be consistent. This question has been so recently and so fully discussed by this court that voluminous citations of authority is unnecessary, see Macklin V. U. S. 79 Fed. 2d, 756, 758-759" giving the pages I mentioned.

"In a sense there is contradiction between the verdict of the jury on the mail fraud counts and the verdict on the security counts; also between the verdict of the jury in Count Five and the verdict in counts Three and Four; and Six and Seven; because the same scheme to defraud must be shown to exist as to all. We might attempt to rationalize the verdict and find out what is in the mind of the jury, but I don't think we can, nor do I think it necessary; we can't say, as we sometimes say, that they may have found there was no mailing, but that wouldn't help very much because these letters were admitted, all the letters and all the telegrams were admitted, all the letters and all the telegrams were admitted to have been sent by the defendant.

"The finding of mail fraud, however, may affect the consideration of the other counts. Had the jury found the existence of a scheme to

defraud through the mail as charged in the indictment in Counts One and Two there would be an element of continuity because that kind of scheme can be traced to continue through every count of the indictment; but when there is a negative finding on that there can be no continuity beyond the actual date of the sale of the security. When the sale is completed the offense is over; the scheme ends with the sale.

"I think that is elementary law which flows from the very nature of the case. The important thing that gives jurisdiction to the Court is the sale through the mail. Without that the sale would be local and outside the province of the Congress of the United States to regulate. "It is only because the mail is used in the sale of the security which is offered generally to the public in interstate commerce that the Congress steps in. Otherwise the case would be governed by the various state Securities Acts. We have had cases where prosecution was instituted by the government in cases where there was actually a state permit. \* \* \*

"So the mere existence of a scheme to defraud in the sale of stock a means of transportation and communications is used that we came within the purview of the Securities Act of 1933. Section 77A subdivision (a) (Section 77q. (a) (2) under which the five counts in the indictment were drawn, last five, 3 to 7, says it shall be unlawful for any person in the

sale of any securities by the use of any means or instrument of transportation, and so forth, to employ any device, scheme, or artifice to defraud. In other words, this is not only aimed merely at the sale of unregistered stock, it is aimed at the scheme or employment of a scheme or artifice to defraud. In other words, this is not only aimed merely at the sale of unregistered stock, it is aimed [98] at the scheme or employment of a scheme in the sales through the means of an instrument or instruments of communication in interstate commerce. Without a sale of the security through the instrument of interstate commerce the offense is not committed; and the moment the securities are actually sold, that very moment the offense is complete.

"It may well be that in the subsequent relationship of the ownership of the promoters and the stockholders other wrongs may be committed, or violations of law, but it would not be violations of this particular statute. So that the findings of the jury as to that stock, its statements to the effect that there was no continuity in the scheme to defraud beyond the actual sales; and then the counts, as this was not a sale to the—to the people at large although it was a sale in the meaning of the statute—in determining what took place we would have to consider each particular count and the particular transaction that was carried on.

"Now we take up Counts Three and Four, which relate to the sale of securities to Arch-

bishop Beckman. We find that the sales were made in 1936 and 1937; the moneys realized from the promissory notes were realized in 1937 and 1938. It is true that some money was advanced later but it was done after the definite agreements had been reached as to a new relationship, which I would call that of a partnership or joint venture. We find Archbishop Beckman, for instance, testifying that late in '39 he advanced some \$24,000.00 in cash and signed \$20,000.00 in notes, after February of 1939. Well, the contract of February, 1939 definitely fixed a new relationship. In fact, to understand that contract we have to refer to two previous exhibits. First we refer to Government's Exhibit 79, which is the contract signed by Suetter, executed in Illinois, which is dated March 26, 1938. Now in that contract it is recited certain moneys had been advanced. The significant language that is being used shows that the question of sale of units has been actually concluded, that the amount of units that was to be given to the Archbishop was definitely settled, and that what we are talking about from then on so far as money was concerned is the furnishing of money to operate properties for the benefit of the joint venture which included Archbishop Beckman. The first Paragraph recites that Suetter is the owner of certain mining premises located in Josephine County. The second paragraph says "That a considerable portion of the funds for the pur-

chase of the above described Suetter placer mine in Josephine County, State of Oregon, were obtained from the sale of certain promissory notes signed by Francis J. L. Beckman as Archbishop of Dubuque payable to the order of Phillip Suetter at the American Trust and Savings Bank." The third, "That approximately \$95,000.00 have been invested by Phillip Suetter in the Suetter Placer Mines in Josephine County, Oregon from his own estate and from his personal sources of income." Clearly the elements of a joint venture. Fifth, "That complete and detailed financial reports," and so forth, will be transmitted by Phillip Suetter to Archbishop Beckman. Then it is provided the proceeds shall be remitted to Archbishop Beckman, after deducting the cost of labor and actual operating expenses, until all outstanding promissory notes shall be paid. This instrument is to serve as a supplement to the Suetter Placer Mines Trust Agreement and so forth. It is binding upon the heirs of Phillip Suetter.

"So we find the situation arising where the Archbishop as [99] he testified, wanted to know where he stood, requested this agreement, so that from there on it was a joint venture where Beckman had put some of his—the Archbishop put up some of his money and the Archbishop was to be numbered first out of the proceeds.

"Exhibit 82 is a continuation of what was begun earlier in the year—this is signed

May, 1938, signed at Dubuque at the Archbiishop's residence and witnessed by his sister—which is his acknowledgement of the receipt of \$253,-750.00 worth of promissory notes, contains a statement as to who is holding them, and Suetter also acknowledges the receipt of \$59,000.00 "in cash by the undersigned Phillip Suetter," over and above the amount of the notes for the same purpose outlined in the first paragraph. Now the purpose outlined in the first paragraph is indicated by this language: "—receipt of the undersigned Phillip Suetter, of notes in the amount of \$253,750.00 from the Most Reverend Francis J. Beckman for which the undersigned Phillip Suetter has given to the said Most Rev. Francis J. Beckman 150 units in the Suetter Placer mines, Kerby, Oregon, and a 49% interest in the John Bosco Placer Mine in Del Norte County, California." "For which he was given," in other words, this was a receipt for the money in exchange for the sales which had already been completed both of the units and the undivided percentage in the placer mine. Now that preceded by 10 months the execution of Exhibit 99.

"We will remember that some of the money which had been realized from the same of these interests had been used in acquiring other properties; and so we find this Exhibit 99, executed at Portland, Oregon, on February 11, 1939, "Witnesseth:" as follows; it is only three para-

graphs; "Whereas the Party of the First Part has and still is financing the Party of the Second Part in acquiring and developing mines known as: St. John Bosco, also known as the French Hill Mine, in Del Norte County, California; the Norton Mines in Josephine County, Oregon; and the California Mine, also known as the Reuben Mine, on Graves Creek, Josephine County, Oregon.

"Now, Therefore, It is hereby agreed between said parties that the ownership of said mines shall be held on a basis of 60% to the party of the First Part and 40% to the Party of the Second Part, and that a more formal agreement covering the description and method of operation shall hereinafter be entered into between the parties, including proper transfers of title as the respective interests may require.

"So what we find here is a restatement of the percentages already agreed to before and the straight 60/40 division of the property to take the place of the 49/51 division referred to in Exhibit 82. Exhibit 82 refers to the Suetter mine and also the Bosco mine. Previously the interest of the Archbishop in the Suetter Placer Mines was designated by units. Now the units have been abandoned and instead we have ownership of 60 in favor of the Archbishop and 40 in favor of Suetter.

"An action was instituted thereafter for an accounting and a suit was brought in the Circuit Court of Josephine County on June 1,

1939. The Complaint was verified by Monsignore O'Laughlin as the agent of the plaintiff by virtue of power and authority granted to him, and we find that he had been in the State as the representative of Archbishop Beckman and he is referred to in letters which form the basis [100] of Counts Three and Four.

"We have oral testimony about the meeting of June 2, and the result of the meeting after the institution of this action was the execution by the parties of Government's Exhibit 101, an agreement dated June 17, 1939, whereby the Archbishop acquired all the right in the Suetter mines in Del Norte County, and he agrees to pay Mr. Suetter \$20,000.00 and to allow him to keep the Josephine Mines. We find from the testimony that \$10,000.00 was paid and later on Mr. Suetter still insists in some letters the Bishop still owes him some money. I think he is mistaken because the record shows over a year afterwards on August, 1940, Exhibit 103, Archbishop Beckman's letter to August Walker, Ford McCormick, and Monsignore O'Laughlin, dated August 29, 1940, he surrenders to Suetter in lieu of \$10,000.00 certain mining equipment which is therein described.

"If we examine the letters which form the basis of Counts Three and Four it becomes very apparent in the light of the examination which I have made that they could not possibly be tied to any scheme to defraud in the sale of a security. The sales had been complete long

before. The parties were dealing at arms length. Archbishop Beckman, mistrusting Mr. Suetter, had placed one of his own men on the place. Any representatives such as to the interest of Mr. Montag has been long past and forgotten and merged into the subsequent dealings with the knowledge of it, which of course, in civil law and criminal law fraud amounts to a waiver of the fraud. But it is very significant to find that Archbishop Beckman, on page 26 of the transcript which has been prepared for me, states specifically that he knew of Mr. Montag's interest about 6 months after he met Suetter. The only thing he didn't know is how the interest was secured, but he did say that he heard about Montag and he knew that Montag had an interest in the property. This appears on page 26 and reads like this, question by Mr. Dillard: "What about the title to the property: What other persons, according to your information, had an interest in the title to the property?" Answer: "I had heard after that that Mr. Montag had an interest in it, had a title—had rights to it. Question: "You heard that afterwards?" Answer: Some time—Originally when Mr. Suetter came to me he represented the mines as his own personal exclusive property, and I asked him, 'Is there anybody else in on it?'" He said: No; all mine. Some time after that somebody or other told me that his housekeeper had a share in it, and I asked him about it. He says 'No; she has nothing to do

with it.' And I started pressing and urging, and he finally admitted there was a Mr. Montag had put money into it; but he always assured me that Mr. Montag would get his share out of his, Suetter's, share; it would never affect me. Question: About when did you learn of the interest of Mr. Montag? Answer: Oh, it must have been perhaps six months after I had met him—had met Mr. Suetter. Question: And about when did you learn, or did you ever learn, the fact that Mr. Montag was the holder of a mortgage for the purchase price of the property? Answer: I never heard of it."

"So it is quite apparent that he knew there had been misrepresentations as to the title six months afterwards at a time when many of these notes had not been sold. Negotiations had afterwards and settlements were had with a full knowledge of the facts, continues to deal with a person in- [101] stead of standing upon his rights and insisting in making good the representations or rescinding the contract. So we find not only absence of any rescission of the sale, but we find in early '38 an attempt of Archbishop Beckman of placing his relationship on a sounder written basis, which resulted in merging the entire unit situation and unit sale into a clear ownership on a percentage basis. So that in light of the fact that the jury has found there is no continuity of the scheme so far as the sales are concerned, the correct legal conception would not warrant the

inference that the scheme was continued unless there were further correspondence relating to further units of interest. I may say that that is the case so far as Bishop Rhode is concerned; but we are talking now merely as to Archbishop Beckman. Whatever money was advanced after that, after the agreement of February 1939, was that of a joint venture with equal purpose, and even that was terminated by the June agreement when they gave themselves a bill of divorce and they each went their way.

"Now, if we examine the letters which form the basis of the Beckman counts, as we have called them, we find the one on Count Three is dated May 28, 1939, just three days before the complaint was signed. I assume the complaint was in preparation because I am paying a compliment as one student to another, a high compliment to the man who drew the Bishop's complaint for accounting on the basis of a trusteeship, asking for an account of the moneys to be made. That complaint must have been in preparation before, because I cannot conceive any lawyer just calling in Mrs. Jones and starting in to dictate that kind of a document, no matter how prominent a lawyer, so that can't be done in so short a time. So this defendant evidently by this letter—Suetter was endeavoring to call off the police dogs. You might call it, to use an ordinary expression, was telling the Archbishop that he has a substantial interest in the mine and that if he would allow him to go ahead and exploit that

they would all be all right, and asked him to stop interference with O'Laughlin and so forth. Well, it is true there is a statement about how much money he needed and there was also a request for money. You must bear in mind that the relationship between the parties was strictly established the year before, and reaffirmed by the Contract of February 11th of that same year, and it was just one partner writing another and merely asking for money with which to operate. No question of selling any security. The percentage remained as it had been fixed before, so this cannot be said, by any stretch of the imagination, to say it was a continuing demand relating to sale of securities. We are not talking here about a prospectus sent out in the general public.

"In the Olsen case which I tried they charged him—Olsen v. U. S.—in that particular venture there was a continuous offer to the public and while they were asking money from one man they were propositioning other people, so I held there was a continuity in scheme; but we are not dealing with that kind of scheme here. This was an inside deal, and the deal so far as Beckman was concerned in the acquisition of units had actually terminated by the assumption of a general venture in which he got a definite percentage in exchange for the units which had been sold him before.

"Now the Count Four letter is identical with it. That is dated the same; that is dated the

following day, May 29th. [102] In that particular case we find him again telling his troubles. He talks about the engineer Walker. Incidentally, Walker was one of the committee that were in charge of the affairs and it was to Walker that this letter of August 29, 1940, and to two others, was addressed. They were complaining about Walker and there were further statements relating to the need for further exploitation during the summer. But as I said before, the relationship was already established and I cannot hold that these relationships were a continuing offer or attempt to get him to invest more money because under the contract he was bound to give his share to produce his share in the development of the mine. The law would read into any venture where it is agreed to divide the ownership a certain way an agreement to divide losses and an agreement to contribute his share. The law of joint venture is the same in Oregon as it is anywhere else.

"So, gentlemen, I am of the view that a thorough analysis of the evidence in the light of the verdict of the jury, in the light of the jury's findings that there was no continuous scheme in the first two, in the light of the fact that we are limited as to the counts to the particular transaction, but we do not have here a continuous offer to the public at large, but sales to specific individuals, that there is no evidence to sustain the verdict of the jury as to Counts Three and Four.

I don't like to be guilty of what the French call "Esprit d'escalier"; that is; stairway wisdom. That is the bright remarks that occur to you after you leave the friend's house. The bright remarks that you didn't say that you could have said. So I do not try to judge what I did or what I did not do in the past. Perhaps I was in error in not granting the motion to dismiss. I am not trying to justify my action on the light of the past. Our entire judicial system is postulated on the possibility of error and the motion for new trial has no other object. While it is not granted very often, I have been known to grant it. It may well be that perhaps if I had had the clear vision of the case that I have now I might have reached the conclusion that regardless of any possible verdict on Counts One and Two, that so far as Counts Three and Four were concerned, the evidence was clear that the sale had been terminated. I give counsel credit for urging that point. I cannot say—I haven't the portion of the transcript—I cannot say whether in denying it I had in mind the possibility that might arise from the finding of the jury of guilty on the first counts. If I made an error, why, I am willing to acknowledge it. At any rate, it is clear to me in the light of the record as I understand it now that there is absolutely no evidence whatsoever on which a conviction could be based or be sustained and that if an appeal were taken from the

denial of a motion for a new trial I am quite certain that this Court would be reversed as to this question.

"I am also of the view that in view of this conclusion, in view of the nature of the evidence before the Court, I should not only grant a new trial, but I will grant a new trial as to counts Three and Four, and in the interests of justice and upon the ground that the evidence is insufficient to warrant any conviction in the light of the record, [103] I shall dismiss the two Counts indicated. So the order will be: Motion for a New Trial granted as to Counts Three and Four of the indictment and the Court for the reason indicated, because there is no evidence upon which any jury could, now especially that the Government could not retry the issue of the mail fraud counts, find the defendant guilty, the Court orders the two counts dismissed. The motion for new trial as the Counts Six and Seven will be as to each of them denied. I shall not go into detail as to that other than to point out as to Bishop Rhode the situation which I found to exist as to Archbishop Beckman did not obtain. Bishop Rhode was in all respects an investor; he was buying units, and every time he was advancing money he was doing it in exchange for units; and as to him there was a constant offer and re-offer and constant demand for money in exchange for units. So we find Count Six, dated July 27, 1939, letter from Bishop Rhode transmitting

\$2,000.00 and asking that the units be sent to him, certificates for three units, two paid by the present check and one by the check of May 8th last. So we had clearly a continuance of the solicitation and purchase. This is also evidenced by the letter of August 25, 1939. Mr. Suetter continues his solicitation. He says he is not able to send the units because his equipment is elsewhere. It was in Portland. And he said: "Would have forwarded your units but all of my office equipment and records are packed in Portland." And then he said he was getting ready to open up and couldn't the Bishop invest some more; he wants another \$5,000.00. He said he will carry the payroll but 'I would appreciate another five thousand to purchase the equipment. I will carry the payroll. This will result in quick returns.'

"So we have an entirely different situation. We don't have him saying to Bishop Rhode as he said to Archbishop Beckman: Here, you and I are partners; we need this money; and we are sitting on one hundred million dollars. He just said, give me more money; invest more and you will get quick returns. So that as to Bishop Rhode we find the scheme was absolutely continuous.

"Now, we do not even have to do any rationalizing as to any reationalization. It is true the scheme to defraud is the same scheme that existed as to letters or Counts One and Two, which were also Rhode letters. But per-

haps members of the jury—there were some real estate men familiar with the problem of closing, what they call closing a transaction; real estate men use it especially. There are certain salesmen that can start a prospect, get him interested, but they are not what they call “closers”, so they trot out the prima donna who they call the “closer” and he starts in after the prospect and closes the deal. These letters were closers, and there is absolutely no inconsistency between the finding as to the Rhode letters in Counts One and Two and as to these letters. These letters are clearly letters of solicitation to him, asking the sending of money in pursuance of a continuous demand for further investments on promise of quick returns.

“So that the verdict of the jury here does not in any way conflict, so far as the existence of a scheme to defraud is concerned, with the negative finding of the jury [104] as to Counts One and Two, and the motion for a new trial as to Counts Six and Seven and as to each of them will stand denied.”

To which ruling of said Court in failing to grant a new trial or to dismiss the conviction as to Counts Six and Seven defendant, by his counsel, then and there excepted.

Thereupon the Court rendered its sentence and judgment upon said verdict which sentence and judgment is as follows:

"It is the judgment of the Court, Phillip Suetter, that for the offense in which you stand convicted, on Count Six of the indictment, you be sentenced to a penal institution to be designated by the Attorney-General for a period of two and one-half years. It is the judgment of the Court that for the offense of which you stand convicted, on Count Seven of the indictment, you be sentenced to a penal institution to be designated by the Attorney-General for a like period of two and one-half years; but because the facts underlying both these counts are the same, the transaction is one, and taking also into consideration the recommendation of the jury, and your age, it is the judgment of the Court that the sentence on Count Seven shall run concurrently with the sentence on Count Six, so that only the total number of years to be served shall be two and one-half years."

And now in the furtherance of justice, and that right may be done, the defendant, Phillip Suetter, tenders and presents the foregoing as his Bill of exceptions in this case, and prays that the same may be settled and allowed and signed and sealed by the Court and made part of the record, and the same is accordingly done this 12th day of April, 1943.

LEON R. YANKWICH,  
Trial Judge.

State of Oregon,  
County of Multnomah—ss.

Due and legal service of the foregoing bill of exceptions is hereby admitted in Multnomah County, Oregon, this 2 day of Apr., 1943.

J. MASON DILLARD,  
Asst. Dist. Attorney for  
Oregon.

[Endorsed]: Filed April 13, 1943. [105]

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In the District Court of the United States  
for the District of Oregon

On Appeal  
No. C-16075

UNITED STATES OF AMERICA

vs.

PHILLIP SUETTER,  
Defendant.

#### ASSIGNMENT OF ERRORS

Comes now, the Defendant, Phillip Suetter, by W. J. Prendergast, Jr. and David Weinstein, his attorneys, and having made and filed his Notice of Appeal in accordance with the rules of the Supreme Court of the United States promulgated under authority of Congress (Act of March 4, 1934) now makes and files forthwith this, his Assignment of

Errors, and says that in the trial of the said case, and in the records, proceedings, rulings, and judgment aforesaid, manifest error has intervened to his prejudice, namely:

1. The evidence in the case did not demonstrate, beyond a reasonable doubt, the defendant's guilt.
2. The evidence disclosed:
  - (a) The verdict and judgment are contrary to the law.
  - (b) The verdict and judgment are contrary to the evidence.
  - (c) The evidence is manifestly insufficient to support the verdict of the jury.
  - (d) The evidence is wholly insufficient to show the guilt of the defendant, beyond a reasonable doubt.
3. The Court erred in admitting, over defendant's objection, all of the evidence without requiring the United States to designate or elect as to which count or counts in the indictment such evidence was directed.
4. The Court erred in denying defendant's motion to dismiss Counts One, Two, Three, Four, Five, Six and Seven, at the close of the case for the United States.
5. The Court erred in denying defendant's motion for a new trial as to Counts Six and Seven of said indictment.
6. The Court erred in holding that there was no inconsistency in the jury's verdict.

Wherefore, Appellant prays that the judgment of the District Court of the United States may be reversed and held for naught.

W. J. PRENDERGAST

DAVID WEINSTEIN

Attorneys for Appellant

PHILLIP SUETTER

Appellant

State of Oregon,

County of Multnomah—ss.

Due and legal service of the foregoing assignment of errors is hereby admitted in Multnomah County, Oregon, this 24th day of Dec., 1942.

J. MASON DILLARD

Deputy District Attorneys for the United States  
for the State of Oregon.

[Endorsed]: Filed Jan. 18, 1943.

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[Endorsed]: No. 10300. United States Circuit Court of Appeals for the Ninth Circuit. Phillip Suetter, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed February 17, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10-300

PHILLIP SUETTER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH  
APPELLANT RELIES

Comes now the appellant in the above entitled cause and respectfully submits to this Court a statement of the points upon which the appellant intends to rely, as follows:

1. The Court erred in failing to grant the defendant's motion for dismissal at the close of the case for the United States.
2. There is no evidence to support the verdict of the jury.
3. The Court erred in admitting into evidence, over the objection of the defendant, Government's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 36, 37, 38, 40, 42, 57, 67, 79, without requiring the United States to designate, or elect, as to which charge, or charges, in the indictment the evidence was directed.
4. The Court erred in failing to set aside the verdict of Guilty on Counts Six and Seven and

dismissing the indictment for the reason that the jury, in finding the appellant not Guilty on Counts One and Two, a fortiori, found appellant Not Guilty of the crime charged in the indictment, there being only one alleged scheme to defraud, and the verdict was therefore inconsistent.

Respectfully submitted,

W. J. PRENDERGAST, Esquire,  
Spalding Building  
Portland, Oregon

DAVID WEINSTEIN, Esquire,  
Spalding Building  
Portland, Oregon  
Attorneys for the Appellant

State of Oregon,  
County of Multnomah—ss.

Due and legal service of the foregoing statement of points upon which appellant relies is hereby admitted in Multnomah County, Oregon, this 29th day of April, 1943.

WILLIAM H. HEDLUND  
of attorneys for the United  
States

[Endorsed]: Filed May 1, 1943. Paul P.  
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF THE TRAN-  
SCRIPT OF THE RECORD TO BE  
PRINTED.

1. Indictment.
2. Record of Plea of Not Guilty.
3. Verdict.
4. Motion for New Trial.
5. Order allowing Motion for New Trial as to  
Counts Three and Four.
6. Order dismissing Counts Three and Four of  
Indictment.
7. Order Denying Motion for New Trial as to  
Counts Six and Seven.
8. Sentence of Defendant.
9. Notice of Appeal.
10. Order Fixing Amount of Bail pending Ap-  
peal and for Release of Defendant.
11. Order Approving Bond pending Appeal and  
to Release Defendant.
12. Praecipe for Transcript of Record.
13. Certificate to Transcript.
14. Bill of Exceptions in its Entirety.

15. Assignments of Error.
16. This Designation of Parts of the Record.

Respectfully submitted,

W. J. PRENDERGAST

Spalding Building,  
Portland, Oregon

DAVID WEINSTEIN

Spalding Building,  
Portland, Oregon  
Attorneys for Appellant.

State of Oregon,

County of Multnomah—ss.

Due and legal service of the foregoing designation of parts of transcript to be printed is hereby admitted in Multnomah County, Oregon, this 29th day of Apr., 1943.

WILLIAM H. HEDLUND

of attorneys for the United  
States

[Endorsed]: Filed May 1, 1943. Paul P.  
O'Brien, Clerk.